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RECORD, CASE No. 14,852.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 1378.

E. P. FERRY, EBEN SMITH, AND DAVID KELLOGG, EXECUTORS OF GEORGE D. HILL, DECEASED, ET AL., PLAINTIFFS IN ERROR,

vs.

THE COUNTY OF KING, AND JAMES McNAUGHT, DE F. S. HYDE, AND FLORENCE HYDE CHICK, EXECUTORS OF D. N. HYDE, DECEASED.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

FILED SEPTEMBER 21, 1891.

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1 In the District Court of the Third Judicial District of Washington Territory, Holding Terms at Seattle, for the Counties of King and Kitsap.

THE COUNTY OF KING, Plaintiff,
vs.
GEORGE D. HILL, HENRY L. YESLER, JAMES McNAUGHT, JOHN LEARY, J. W. GEORGE, D. N. HYDE, ELISHA P. FERRY, JOSEPH McNAUGHT, Defendants. } Complaint.

The plaintiff, The County of King, a public corporation existing under the laws of the Territory of Washington, complains and states the following facts constituting its cause of action:

I.

That heretofore, to wit, at the general election held in November, 1882, the said defendant Geo. D. Hill was duly elected county treasurer of said county of King for the term of two years from and after the first Monday of January then next.

II.

That afterwards, to wit, at said King county, on November the 13th, 1882, the said George D. Hill, as principal, with the said Henry L. Yesler, James McNaught, John Leary, J. W. George, D. N. Hyde, E. P. Ferry, and Joseph F. McNaught, as sureties, duly executed his bond to the said county of King, in the words and figures following, to wit:

2 "Know all men by these presents that we, Geo. D. Hill, as principal, and Henry L. Yesler, James McNaught, John Leary, J. W. George, D. N. Hyde, E. P. Ferry, and Joseph F. McNaught, as sureties, are held and firmly bound unto The County of King, Territory of Washington, in the sum of sixty thousand dollars; to the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 13th day of November, A. D. 1882.

The condition of the above obligation is such that whereas, on the 7th day of November, A. D. 1882, the above-bounden Geo. D. Hill was elected county treasurer of the said county of King for the term of said office beginning on the 1st Monday of January, A. D. 1883:

Now, if the said Geo. D. Hill shall pay all moneys received by him for the use of said county as the county commissioners shall from time to time direct, except where special provision is made by law for the payment of such moneys by order of any court or otherwise, and shall faithfully discharge the duties of his said office during the term thereof or while he shall act as such county treas-

urer under said election, then this obligation to be void; otherwise to remain in full force and effect.

	GEO. D. HILL.	[SEAL.]	$60,000.
	HENRY L. YESLER.	[SEAL.]	$20,000.
	JAMES McNAUGHT.	[SEAL.]	$10,000.
3	JOHN LEARY.	[SEAL.]	$10,000.
	J. W. GEORGE.	[SEAL.]	$5,000.
	D. N. HYDE.	[SEAL.]	$5,000.
	ELISHA P. FERRY.	[SEAL.]	$5,000.
	JOSEPH McNAUGHT.	[SEAL.]	$5,000.

Subscribed and sworn to before me this 13th day of November, A. D. 1882.

D. T. WHEELER,
Notary Public.

TERRITORY OF WASHINGTON, } ss:
County of King, }

Henry L. Yesler on oath says that he is a resident of King county, and that he is worth twenty thousand dollars over and above all debts and liabilities and exclusive of property exempt from execution.

HENRY L. YESLER.

Subscribed and sworn to before me this 13th day of November, A. D. 1882.

D. T. WHEELER,
Notary Public.

TERRITORY OF WASHINGTON, } ss:
County of King, }

James McNaught on oath says that he is a resident of King county, and that he is worth ten thousand dollars over and above all debts and liabilities and exclusive of property exempt from execution.

JAMES McNAUGHT.

Subscribed and sworn to before me this 13th day of No-
4 vember, A. D. 1882.

D. T. WHEELER,
Notary Public.

TERRITORY OF WASHINGTON, } ss:
County of King, }

John Leary on oath says that he is a resident of King county, W. T., and that he is worth ten thousand dollars over and above all debts and liabilities and exclusive of property exempt from execution.

JOHN LEARY.

Subscribed and sworn to before me this 13th day of November, A. D. 1882.

D. T. WHEELER,
Notary Public.

TERRITORY OF WASHINGTON, } ss:
County of King, }

J. W. George on oath says that he is a resident of said King county, and that he is worth five thousand dollars over and above all debts and liabilities and exclusive of property exempt from execution.

J. W. GEORGE.

Subscribed and sworn to before me this 13th day of November, A. D. 1882.

D. T. WHEELER,
Notary Public.

5 TERRITORY OF WASHINGTON, } ss:
County of King, }

D. N. Hyde on oath says that he is a resident of said King county, and that he is worth five thousand dollars over and above all debts and liabilities and exclusive of property exempt from execution.

D. N. HYDE.

Subscribed and sworn to before me this 13th day of November, 1882.

D. T. WHEELER,
Notary Public.

TERRITORY OF WASHINGTON, } ss:
County of King, }

E. P. Ferry on oath says that he is a resident of *of* said King county, and that he is worth five thousand dollars over and above all debts and liabilities and exclusive of property exempt from execution.

ELISHA P. FERRY.

Subscribed and sworn to before me this 13th day of November, 1882.

D. T. WHEELER,
Notary Public.

TERRITORY OF WASHINGTON, } ss:
County of King, }

Joseph F. McNaught on oath says that he is a resident of
6 said King county, and that he is worth five thousand dollars over and above all debts and liabilities and exclusive of property exempt from execution.

JOSEPH F. McNAUGHT.

Subscribed and sworn to before me this 13th day of November, A. D. 1882.

D. T. WHEELER,
Notary Public."

Which said bond was in the sum duly fixed by order of the board of county commissioners of said county and was duly approved by said board; and afterwards, to wit, on the first Monday of January, 1883, the said George D. Hill took the oath of office as required by law and entered upon the discharge of his duties as such county treasurer and continued to act as such for and during the full term for which he was elected.

III.

That after the execution and approval of said bond as aforesaid and while he was acting as county treasurer as aforesaid, on, to wit, the — day of January, 1883, and on divers other days and times between that date and the first Monday in January, 1885, as treasurer as aforesaid, the said Geo. D. Hill had and received for the use of said county of King divers large sums of money, aggregating, to wit, the sum of two hundred and thirty-eight thousand and six hundred and eighty-five and $\frac{89}{100}$ dollars ($238,685.89).

IV.

7 That said George D. Hill, as such treasurer, did not faithfully discharge his duties, as required by law; that he did not account to the proper authorities, as required by law, or at all for all of said sums of money so by him received as aforesaid; that he did not account for or pay over to his successor in office all of said public funds so as aforesaid by him received, but, on the contrary, he wholly neglected and refused to account for to the proper authority and to pay over to his successor in office at the close of his said term a large amount of said sum so as aforesaid by him received, to wit, the sum of five thousand five hundred and thirty-nine and $\frac{51}{100}$ dollars, and has applied and converted the said sum last aforesaid to his own use, contrary to his duty as such treasurer and contrary to the conditions of his said bond.

V.

That in the accounts kept by the treasurer and auditor of said county and the settlements had with the board for and on account of said funds so as aforesaid received by him the said Hill was charged with having had and received only the sum of, to wit, two hundred and thirty-three thousand three hundred and one and $\frac{3}{100}$ dollars ($233,301.03), and only accounted for said sum last aforesaid; that by mistake and error there was overlooked by said board and auditor of said sum so by him collected the sum of five thousand three hundred and eighty-four and $\frac{86}{100}$ dollars ($5,384.86), which was not charged to him and with which he was justly chargeable, which said sum the said Hill wholly neglected to ac-
8 count for, as it was his duty to do, and still doth neglect and refuse to do.

VI.

That in the said several book accounts kept and settlements had with said Hill by the treasurer, auditor, and board touching the said

sums by him so had and received as treasurer as aforesaid he had and received, among others, the following credits, to wit:

On account of road and bridge fund, $17,646.24; on account of county warrants redeemed, principal paid, $78,779 88; that in truth and in fact he was only entitled to credits for and on account of the matters aforesaid the following sums, to wit:

On account of road and bridge fund, $17,596.24; on account of county warrants redeemed, principal paid, $78,675.23; and that said credits so above given were so given by mistake and error on the part of said treasurer, auditor, and board; and the said Hill neglected and refused to account for the sum of $154.65, being the excess of the credits actually given over the credits to which he was in fact entitled; and the said defendant George D. Hill hath ever since and yet doth neglect and refuse to account for the whole or any part of said sum, and has converted the same to his own use.

Wherefore, by reason of all the matters aforesaid, there is justly due to said plaintiff from the said defendants and each of
9 them the sum of five thousand five hundred and thirty-nine and $\frac{51}{100}$ — ($5,539.51), with interest from the fifth day of January, 1885, in which amount the said plaintiff demands judgment against the said defendants and each of them and for costs and disbursements of this action.

J. R. LEWIS AND RONALD & PILES,
Attorneys for Plaintiff.

TERRITORY OF WASHINGTON, } ss:
County of King, }

Lyman Wood, being first duly sworn, on oath says that he is the county auditor of the said county of King, Territory of Washington; that he has heard read the foregoing complaint, knows the contents thereof, and believes the same to be true; that the material allegations of the foregoing complaint are known to this affiant.

LYMAN WOOD.

Subscribed and sworn to before me this 26th day of August, 1887.

S. H. PILES,
Notary Public.

(Indorsed:) Filed Aug. 26, '87. W. E. Ledgerwood, clerk.

10 In the District Court, Holding Terms at Seattle.

THE COUNTY OF KING
vs.
GEORGE D. HILL, H. L. YESLER, JAMES McNaught, John Leary, J. W. George, D. N. Hyde, Elisha P. Ferry, Joseph F. McNaught. } No. 5475. Præcipe.

For the clerk of the above court:

Please issue summons in the above-entitled cause and deliver to the sheriff of King county for services.

J. R. LEWIS AND RONALD & PILES,
Att'ys for Plaintiff.

Aug. 26, 1887.

(Indorsed:) Filed Aug. 26, 1887. W. E. Ledgerwood, clerk, by H. T. Hannon, deputy clerk.

11 TERRITORY OF WASHINGTON, } ss:
County of King, }

I, William Cochrane, sheriff of King county, W. T., do hereby certify that I received the annexed summons on the 26th day of August, 1887, and personally served the said summons on James McNaught on the 26th day of August, 1887, and on Geo. D. Hill, H. L. Yesler, J. W. George, D. N. Hyde, Elisha P. Ferry, and Joseph F. McNaught on the 3rd day of September, 1887, they being the defendants named in said summons, by delivering to and leaving with each of the said defendants personally, in Seattle, King county, W. T., a copy of said summons.

Dated at Seattle, W. T., this 3rd day of Sept., 1887.

WILLIAM COCHRANE,
Sheriff of King County, W. T.

Sheriff's fees:

Serving summons ------	$8 00
8 copies of summons ----	12 00
Travel, 4 miles----------	40
	$20 40

12 In the District Court of the Third Judicial District of the Territory of Washington, Holding Terms at Seattle, in King County, for the Counties of King and Kitsap.

THE COUNTY OF KING, Plaintiff,
vs.
GEO. D. HILL, H. L. YESLER, JAMES MCNAUGHT, JOHN LEARY, J. W. GEORGE, D. N. HYDE, ELISHA P. FERRY, JOSEPH F. MCNAUGHT, Defendants. } No. 5475.

The United States of America send greeting to Geo. D. Hill, H. L. Yesler, James McNaught, John Leary, J. W. George, D. N. Hyde, Elisha P. Ferry, and Joseph F. McNaught, defendants:

You are hereby required to appear in action brought against you by the above-named plaintiff in the district court of the third judicial district of the Territory of Washington, holding terms at the city of Seattle, in the county of King, for the counties of King and Kitsap, and to answer the complaint filed therein within twenty days (exclusive of the day of service) after the service on you of this summons if served within said county of King, or if served out of that county, but in this district, within thirty days, otherwise within forty days, or judgment by default will be taken against you according to the prayer of the complaint.

The said action is brought to recover the sum of five thousand five hundred and thirty-nine and $\frac{51}{100}$ dollars, with legal interest

from the first Monday in January, 1885, upon a cause of
13 action, the cause and general nature of which is as follows:

The said plaintiff is a public corporation existing under the laws of Washington Territory; that at the general November election, 1882, defendant George D. Hill was elected county treasurer of said county for the term of two years from the first Monday in January following; that thereafter he duly made and executed his bond as such treasurer as required by law in the sum of sixty thousand dollars, with the above-named defendants as sureties, to faithfully perform the duties of said office, and to pay over all moneys received by him according to law, and duly entered upon and was county treasurer of said county for the term of two years from said first Monday in January, 1883; that said George D. Hill did not faithfully discharge the duties of said office or perform the conditions of said bond, in that he received during said term divers large sums of money, aggregating two hundred and thirty-eight thousand six hundred and eighty-five and $\frac{89}{100}$ dollars; that he did not account for or pay over to his successor in office a large amount of said sum so received and collected, to wit, the sum of five thousand five hundred and thirty-nine and $\frac{50}{100}$ dollars, which sum he has neglected and refused to account for and has applied and converted the same to his own use, in which said amount plaintiff demands judgment.

Witness the Honorable Richard A. Jones, judge of the said district court, and the seal thereof, this 26th day of August, A. D. 1887.

[SEAL.] W. E. LEDGERWOOD, *Clerk.*

(Indorsed:) Filed Sep. 6th, 1887. W. E. Ledgerwood, clerk.

14 TERRITORY OF WASHINGTON, } *ss:*
County of King, }

In the District Court, Holding Terms at Seattle, in the Third Judicial District of Washington Territory.

THE COUNTY OF KING } No. 5475. Demurrer to Complaint.
vs.
GEORGE D. HILL *et al.* }

Now comes the defendants George D. Hill, James McNaught, J. W. George, D. N. Hyde, Elish P. Ferry, and Joseph F. McNaught, by their attorneys, Greene, Hanford & McGraw, and demur to the plaintiff's complaint herein on the ground that said complaint does not state facts sufficient to constitute a cause of action.

GREENE, McNAUGHT, HANFORD AND McGRAW,
Attorneys for said Defendants.

We hereby admit that service of the foregoing demurrer has been legally made upon us, the attorney- for the plaintiff in the thereinentitled action, and that we have received a copy of said demurrer at the county of King, W. T., this 3rd day of October, 1887.

J. R. LEWIS & RONALD & PILES,
Attorneys for Plaintiff.

Endorsed: Filed Sept. 3rd, 1887. W. E. Ledgerwood, clerk, by H. T. Hannon, deputy clerk.

15 TERRITORY OF WASHINGTON, } ss:
County of King, }

In the District Court of the Third Judicial District, Holding Terms at Seattle.

THE COUNTY OF KING, Plaintiff,
vs.
GEORGE D. HILL, H. L. YESLER, JAMES McNAUGHT, JOHN LEARY, J. W. GEORGE, D. N. HYDE, ELISHA P. FERRY, and JOSEPH F. McNAUGHT, Defendants.

No. 5475. Motion to Quash Summons.

Come now the defendants George D. Hill, James McNaught, J. W. George, D. N. Hyde, Elisha P. Ferry, and Joseph F. McNaught, by their attorneys, and appear herein specially for the purpose of urging this motion and for no other purpose, and not intending hereby to make any general appearance in this cause, and move the court that the summons issued in this cause out of the above-entitled court on the 26th day of August, 1887, be quashed because said summons does not contain the cause and general nature of the action, as required by law, and for the further reason that no copy of the complaint in said action has been issued and the action has not been properly commenced.

And said defendants further move the court to quash the service of said summons for the reason that no copy of the complaint in said action was served therewith.

GREENE, McNAUGHT, HANFORD & McGRAW,
Attorneys for said Defendants.

16 We hereby admit that the service of the foregoing motion has been legally made upon us, the attorneys for the plaintiff in the therein-entitled action, and that we have received a copy of said motion at the county of King, W. T., this — day of ——, 188–.

LEWIS & RONALD & PILES,
Attorney- for —.

(Indorsed:) Filed this 10th day of Sept., 1887. W. E. Ledgerwood, clerk, by H. T. Hannon, deputy clerk.

17 TERRITORY OF WASHINGTON, } ss:
County of King, }

In the District Court of the Third Judicial District of Washington Territory, Holding Terms at Seattle for the Counties of King and Kitsap.

COUNTY OF KING, Plaintiff,
vs.
GEORGE D. HILL, H. L. YESLER, JAMES McNaught, John Leary, J. W. George, D. N. Hyde, Elisha P. Ferry, and Joseph F. McNaught, Defendants. } No. 5475. Motion to Quash.

Now comes John Leary and, appearing speciallly for the purposes of this motion only, by his attorneys, Burke & Haller, moves the court to quash and set aside the pretended summons issued in this cause and the service thereof because the same does not state the cause or general nature of the action, and because no complaint or copy thereof was served therewith.

BURKE & HALLER,
Attorneys for Defendant Leary.

Received, at Seattle, in King county, Washington Territory, this 21st day of September, 1887, a true copy of the foregoing.

J. R. LEWIS & RONALD & PILES,
Attorneys for Plaintiff.

(Indorsed:) Filed Sept. 21st, 1887. W. E. Ledgerwood, clerk, by H. T. Hannon, deputy.

18 TERRITORY OF WASHINGTON, } ss:
County of King, }

In the District Court of the Third Judicial District of Washington Territory, Holding Terms at Seattle for the Counties of King and Kitsap.

THE COUNTY OF KING, Plaintiff,
vs.
GEORGE D. HILL, H. L. YESLER, JAMES McNaught, John Leary, J. W. George, D. N. Hyde, Elisha P. Ferry, and Joseph F. McNaught, Defendants. } No. 5475. Motion to Quash.

Now comes H. L. Yesler and, appearing specially for the purposes of this motion only, by his attorneys, Burke & Haller, moves the court to quash and set aside the pretended summons issued in this cause and the service thereof because the same does not state the cause or general nature of the action, and because no complaint or copy thereof was served therewith.

BURKE & HALLER,
Attorneys for Defendant Yesler.

Received, at Seattle, in King county, Washington Territory, this 21st day of September, 1887, true copy of the foregoing.

J. R. LEWIS & RONALD & PILES,
Attorneys for Plaintiff.

(Indorsed:) Filed Sept. 21st, 1887. W. E. Ledgerwood, clerk, by H. T. Hannon, deputy.

19 In the District Court of the Third Judicial District of the Territory of Washington, Holding Terms at Seattle for the Counties of King and Kitsap.

COUNTY OF KING, Plaintiff,
vs.
GEORGE D. HILL, H. L. YESLER, JAMES McNAUGHT, JOHN LEARY, J. W. GEORGE, D. N. HYDE, ELISHA P. FERRY, and JOSEPH McNAUGHT, Defendants.

No. 5475. Notice of Calling up Motion to Quash Summons.

To H. L. Yesler and John Leary, two of the above-named defendants, and to Messrs. Burke and Haller, their attorneys.

You and each of you will please take notice that on Tuesday, the 27th day of September, 1887, the above-named plaintiff will call up for hearing before the judge of the above-entitled court, at the courthouse, in the city of Seattle, King county, Washington Territory, at the hour of nine o'clock a. m. of said day, or as soon thereafter as counsel can be heard, your motion to quash the summons and service thereof in the above-entitled action.

J. R. LEWIS & RONALD & PILES,
Attorneys for Plaintiff.

Rec'd true copy of the foregoing notice this 27th day of Sept., 1887, at Seattle, W. T., service of which is hereby admitted.

——— ———,
Attorneys for H. L. Yesler & Jno. Leary.

(Indorsed:) Filed Sep. 23, 1887. W. E. Ledgerwood, clerk.

20 In the District Court of the Third Judicial District of Washington Territory, Holding Terms at Seattle.

WEDNESDAY, *September 28th*, 1887.

COUNTY OF KING
vs.
GEORGE D. HILL *et al.*
No. 5475.

Defendants herein having moved the court to quash the summons in this action because, 1st, the summons does not contain the cause and general nature of the action; 2nd, no copy of the complaint was issued—

On the argument it was insisted that—

1st. The act of the legislature (Laws of 1876, p. 67) is invalid because the object of the act is not stated in its title.

2nd. The summons does not sufficiently state the cause and general nature of the action.

No other ground for the motion was presented, and I think neither of them is well taken.

R. A. JONES, *Judge.*

Whereupon defendant- excepts, and the exception is allowed. Entered Journal " N," page 419.

21 In the District Court of the Third Judicial District of the Territory of Washington, Holding Terms at Seattle.

FRIDAY, *September 30th*, 1887.

THE COUNTY OF KING *vs.* GEORGE D. HILL *et al.* } No. 5475. Rule on Motion to Quash Summons.

And now, on this 30th day of September, 1887, the court, having heard and considered the motion of the defendants George D. Hill, James McNaught, J. W. George, D. N. Hyde, Elisha P. Ferry, and Joseph F. McNaught to quash the summons herein and to quash the service of said summons and the arguments of counsel thereon, denies the same; to which ruling of the court in denying said motion said defendants now except, and their exception is allowed by the court; and the said defendants Hil-, McNaught, George, Hyde, Ferry, and McNaught and each of them, by their attorneys, Greene, McNaught, Hanford and McGraw, without waiving their said exception, appear and ask for an extension of time within which to plead or move further in the case.

And their said application is granted and they are allowed until Oct. 3rd, 1887, to answer or demur to the complaint or move further herein.

R. A. JONES, *Judge.*

Entered Journal " N," page 434.

22 In the District Court of the Third Judicial District of Washington Territory, Holding Terms at Seattle for the Counties of King and Kitsap.

THE COUNTY OF KING, Plaintiff, *vs.* GEORGE D. HILL *et al.*, Defendants. } No. 5475. Motion.

Now comes the defendants Henry L. Yesler and John Leary, by their attorneys, Burke & Haller, and, not waiving their motion heretofore made, but insisting thereon, move the court to cause the third paragraph of the complaint herein to be amended so that it show the dates when the defendant Hill, as treasurer, received for the use of the county said sums of money, together with the items of said sums and the names of the persons by whom the same were paid and the purposes for which they were paid.

And the defendants demand of plaintiffs and move the court to

order that plaintiff do furnish defendants with a bill of particulars fully setting forth the items and amounts of *of* the different payments alleged to have been made to the said defendant Hill, as treasurer of said county, and the dates of the said payments and the names of the persons who paid the same and a specification of the purposes for which the same were paid.

And that said plaintiff be ordered to furnish a bill of particulars of the charges made against said Hill, as alleged in the fifth paragraph of said complaint, as the same were made, and the items of mistake in said charges.

And also a bill of particulars of the different credits al-
23 lowed said Hill, with the items thereof, alleged in paragraph five of said complaint, and a bill of particulars of the items of credits which he was entitled to and should have received, as alleged.

And defendants move the court to grant them a reasonable time after said accounts and bills of particulars be furnished in which to make their pleadings in this cause.

BURKE & HALLER,
Attorneys for Defendants Yesler and Leary.

Received at Seattle, in King county, Washington Territory, this fourth day of October, 1887, a true and correct copy of the foregoing.

J. R. LEWIS AND RONALD & PILES,
Attorney- for Plaintiff.

(Indorsed:) Filed October 4, 1887. W. E. Ledgerwood, clerk, by H. T. Hannon, dep.

24 In the District Court of the Third Judicial District of the Territory of Washington, Holding Terms at Seattle.

THURSDAY, *October 6th*, 1887.

THE COUNTY OF KING
vs.
GEORGE D. HILL *et al.* } No. 5475. Motion Overruled and Exception.

This cause coming on to be heard upon the motion of the defendants Henry L. Yesler and John Leary to make the complaint more definite and certain and to order a bill of particulars of plaintiff's claim, and the court being fully advised in the premises, it is considered and ordered that said motion be, and the same is, overruled; to which ruling said defendants except and the exception is allowed, and the court grants said defendants until Dec. 31st, 1887, to answer herein.

R. A. JONES, *Judge.*

Entered Journal "N," page 476.

25 In the District Court of the Third Judicial District of the Territory of Washington, Holding Terms at Seattle.

FRIDAY, *October 7th*, 1887.

COUNTY OF KING *vs.* GEORGE D. HILL *et al.* } No. 5475. Continuance.

This cause coming on to be heard on defendant Hill's motion for a bill of particulars herein and upon the demurrer to the complaint, the hearing of said motion and demurrer is continued by order of the court until October 18th, 1887, without prejudice.

R. A. JONES, *Judge.*

Entered Journal " N," page 483.

26 In the District Court of the Third Judicial District of the Territory of Washington, Holding Terms at Seattle.

FRIDAY, *November 4th*, 1887.

THE COUNTY OF KING *vs.* GEO. D. HILL *et al.* } No. 5475. Demurrer Overruled. Exception.

Now, on this 4th day of November, 1887, this matter coming on to be heard on the demurrer of defendants Hill, James McNaught, Joseph McNaught, J. W. George, D. N. Hyde, Elisha P. Ferry, and after argument of respective counsel, the court being fully advised in the premises, it is considered and adjudged that the said demurrer be overruled, and that said defendants have until the 25th day of November, 1887, and that defendants Yesler and Leary in said cause have ten days after filing of said answer last mentioned in which to file their answer, and that plaintiff have ten days after filing of last answer to reply; to which order overruling said demurrer said defendants Hill, Jas. McNaught, Jos. McNaught, George, Hyde, and Ferry except, which exception is allowed by the court.

R. A. JONES, *Judge.*

Entered Journal " N," page 568.

27 TERRITORY OF WASHINGTON, *County of King.*

In the District Court of the Third Judicial District, Holding Terms at Seattle.

THE COUNTY OF KING, Plaintiff, *vs.* GEORGE D. HILL, HENRY L. YESLER, JAMES MCNAUGHT, John Leary, J. W. George, D. N. Hyde, Elisha P. Ferry, and Joseph F. McNaught, Defendants. } No. 5475. Answer.

The defendants George D. Hill, James McNaught, J. W. George, D. N. Hyde, Elisha P. Ferry, and Joseph F. McNaught, by Greene,

McNaught, Hanford & McGraw, their attorneys, for answer to the complaint in the above-entitled action say:

I.

They deny that the sums of money in the third paragraph of the complaint mentioned or any sum or sums of money had or received by said defendant Hill amount or amounted to the sum of or aggregated or aggregate the sum of two hundred and thirty-eight thousand six hundred and eighty-five and $\frac{89}{100}$ dollars, or any other or greater sum than one hundred and forty-three thousand two hundred and eighty-five dollars.

II.

They deny that the said Hill wholly or at all refused or
28 neglected to account for to the proper or any authority or to pay over to his successor in office at the close of his said term or at any time the sum of five thousand five hundred and thirty-nine and $\frac{51}{100}$ dollars, mentioned in the fourth paragraph of said complaint, or any sum or amount whatever, or applied or converted said sum or any sum whatever to his own use or contrary to his duty as such treasurer or any duty or contrary to the conditions or any condition of his said bond or otherwise, and they deny each and every allegation contained in the fourth paragraph of said complaint.

III.

They deny that in the accounts kept by the treasurer and auditor of said county or in any account or accounts or the settlements had with the board for or on account of said fund or any settlement or settlements the said Hill was charged with having had and received or charged at all with the sum of two hundred and thirty-three thousand three hundred and one and three-hundredths dollars, mentioned in the fifth paragraph of said complaint, or with any other or greater sum than one hundred and forty-three thousand two hundred and eighty-five dollars. They deny that by said Hill, as such treasurer, there was in anywise collected said sum of two hundred and thirty-three thousand three hundred and one and three-hundredths dollars or any other or greater sum than one hundred and forty-three thousand two hundred and eighty-five
29 dollars. They deny that by mistake or error or at all the sum of five thousand three hundred and eighty-four and $\frac{86}{100}$ dollars, mentioned in said fifth paragraph, or any sum whatever, was overlooked by said board and auditor or either of them. They deny that said sum or any sum whatever was not charged to said Hill with which he was justly or at all chargeable. They deny that said Hill wholly or at all neglected or neglects, refused or refuses, to account for said sum or any sum whatever, and they deny each and every allegation contained in said fifth paragraph and not hereinbefore expressly admitted.

IV.

They deny that any credit mentioned in the sixth paragraph of the complaint or any credit or any part of any credit was given by mistake or error on the part of said treasurer, auditor, and board, or any of them. They deny that said Hill neglected or refused to account for the sum of one hundred and fifty-four and $\frac{60}{100}$ dollars, mentioned in the sixth paragraph of the complaint, or any sum whatever. They deny that said sum or any sum whatever was an excess of credits or credit actually or at all given over credits or credit to which he was actually or at all entitled. They deny that he ever did or does neglect or refuse to account for said sum or any part thereof, or any sum whatever, or has converted the same or any part thereof, or any sum whatever, to his own use, and they deny each and every allegation of the sixth paragraph of the complaint, except that these defendants admit that said Hill received the credits mentioned in said paragraph.

V.

And for a first separate and affirmative defense the defendants say:

VI.

That during all the term of the office of treasurer of said King county next preceding the term of office mentioned in the complaint the defendant George Hill was the duly elected, qualified, and acting treasurer of said King county, and that said defendant Hill, as treasurer of said King county, as well for the term mentioned in the complaint as for the term next preceding the same, attended, with his books and vouchers, before the board of county commissioners of his county, the said county of King, at the May session, in the year 1883, and settled his accounts before said board at that time, and in such settlement said board allowed him as such treasurer the following credits:

1st. Twenty-nine thousand nine hundred and thirty-seven and $\frac{15}{100}$ dollars, being the amount of principal and interest paid on county and road orders subsequent to the last preceding annual settlement.

2nd. Seven thousand five hundred and eighty-six and $\frac{30}{100}$ dollars, being amount paid territorial treasurer during the preceding fiscal year, as per voucher.

3rd. Forty-three thousand seven hundred and seventy-seven and $\frac{42}{100}$ dollars, being amount paid school districts during the preceding fiscal year.

4th. Two thousand three hundred and thirteen dollars and ninety-eight cents, being amount paid road supervisors during the preceding fiscal year.

5th. Three thousand five hundred and sixty-one and $\frac{97}{100}$ dollars, being the amount allowed by law for his compensation.

6th. One hundred and ten and $\frac{75}{100}$ dollars, being such other credit as he was at said May session and for said fiscal year entitled by law to receive.

VII.

That said defendant George D. Hill, as treasurer of said King county for the term mentioned in the complaint, attended, with his books and vouchers, before the board of county commissioners of his, the said King, county at its May session, in the year 1884, and settled his accounts before said board at that time, and in such settlement, which was a complete settlement, said board allowed him as such treasurer the following credits—that is to say:

1st. Fifty-four thousand four hundred and ninety-two and $\frac{45}{100}$ dollars, being the amount of principal and interest paid on county and road orders subsequent to the last preceding annual settlement.

2nd. Eighteen thousand five hundred and fifteen and $\frac{42}{100}$ dollars, being the amount paid territorial treasurer during the next preceding fiscal year, as per voucher.

32 3rd. Thirty thousand one hundred and sixty-two and sixty one-hundredths dollars, being the amount paid school districts during the next preceding fiscal year.

4th. Two thousand six hundred and twenty-nine and sixty one-hundredths dollars, being the amount paid road supervisors during the next preceding year.

5th. Four thousand four hundred and seventy-three and $\frac{63}{100}$ dollars, being the amount allowed by law for the compensation of said Hill as said county treasurer for said fiscal year, and — dollars, being such other credit as he was at said May session entitled by law to receive.

VIII.

That the defendant George D. Hill was the duly elected, qualified, and acting treasurer of said county of King for and during all the term of office of such treasurer next subsequent to the term mentioned in the complaint, and on and after the expiration of the term mentioned in the complaint became and was his own successor in said office for and during said next subsequent term, and that said defendant Hill, as treasurer of said King county for the term mentioned in the complaint and as such treasurer for such next subsequent term, attended, with his books and vouchers, before the board of county commissioners of his county, the said county of King, at its May session, in the year 1885, and settled his

33 accounts before said board at that time, and in such settlement, which was a complete settlement, said board allowed him as such treasurer for said terms the following credits—that is to say:

1st. Seventy thousand five hundred and eighty-two and $\frac{48}{100}$ dollars, being the amount of principal and interest paid on county and — orders subsequent to the last preceding annual settlement.

2nd. Sixteen thousand seven hundred and twenty-seven and $\frac{36}{100}$ dollars, being the amount paid territorial treasurer during the next preceding fiscal year, as per voucher.

3rd. Thirty-seven thousand two hundred and seventy and $\frac{91}{100}$

dollars, being the amount paid school districts during the next preceding year.

4th. Two thousand six hundred and forty dollars and three cents, being amount paid road supervisors during the next preceding fiscal year.

5th. Four thousand three hundred and thirty-two and $\frac{97}{100}$ dollars, being the amount allowed by law for the compensation of said Hill as said county treasurer for said fiscal year, and — dollars, being such other credit as he was at said May session and for said fiscal year entitled by law to receive.

IX.

That at the end of the fiscal year covered by the settlement
34 last above pleaded there were remaining and being in the possession of said Hill, as treasurer of said county, moneys for which he was then accountable as such treasurer, amounting to a large sum, to wit, the sum of fourteen thousand and two and $\frac{48}{100}$ dollars, over and above all credits in this defense pleaded, and that said sum and the credits allowed as aforesaid in said settlement then equalled or exceeded in amount all moneys that at and after the beginning of the fiscal year covered by the first of said settlements and before and up to and including the end of the first year covered by the last of said settlements came into or were in the possession of said Hill or said Hill became in anywise liable or accountable for as such treasurer.

X.

That said accounts and credits and each of them in this defense pleaded and as settled and allowed as aforesaid are just and true, to the best of the knowledge and belief of these defendants.

XI.

And for a second separate and affirmative defense these defendants say:

XII.

They repeat and make part of this defense each and every allegation contained in the first affirmative defense above pleaded
35 down to and including the word "term" in the seventh line of the eighth paragraph of this answer, and further say:

XIII.

That after the end of the fiscal year covered by the settlement last above pleaded in this defense and before and up to the expiration of the term of office mentioned in the complaint said defendant Hill, while and as treasurer for said term, paid, laid out, and expended, at the special instance and request of said county, upon county orders of said county, duly signed and issued by the auditor of said county, divers sums of money, aggregating, to wit, fifty-nine thousand three hundred and fifty-two and $\frac{96}{100}$ dollars, and turned

over to the respective supervisors of the road districts of said county the respective delinquent road taxes of said districts, aggregating another large sum of money, to wit, the sum of one thousand nine hundred and seventy-three and $\frac{36}{100}$ dollars, and paid out, at the special instance and request of the several school districts of said county, on the warrants of the respective directors of said districts, countersigned in the case of each warrant by the district clerk of the district and properly endorsed by the holders respectively of said warrants, divers other sums of money of said districts respectively, aggregating, to wit, thirty-three thousand eight hundred and thirteen and $\frac{74}{100}$ dollars, and

36 paid into the territorial treasury and forwarded to the territorial treasurer, in such manner as said territorial treasurer directed, divers other sums of money of said Territory, aggregating, to wit, nineteen thousand one hundred and nine and $\frac{63}{100}$ dollars, and upon the expiration of said term, to wit, on the first Monday of January, 1885, paid over to himself, who was then as aforesaid his own successor as treasurer of said county, another large sum of money, to wit, the sum of thirty-nine thousand two hundred and sixty-two and $\frac{57}{100}$ dollars, which said sum so as aforesaid paid, laid out, and expended and paid and forwarded and paid over, together with the credits allowed as in this defense pleaded upon the settlements in this defense mentioned, and together with four per cent. of all moneys received and paid out by said Hill as treasurer of said county between the end of the fiscal year last above mentioned and the expiration of said term, were and are in excess of all moneys that at and after the beginning of the fiscal year embraced in the first of said settlements and before and up to the expiration of said term came into or were in the hands of said Hill or said Hill became in anywise liable or accountable for as such treasurer.

XIV.

And for a third separate and affirmative defense these defendants say:

XV.

37 That on the 20th day of May, 1884, the plaintiff, by its board of county commissioners, and the defendant George D. Hill, while and as county treasurer of said King county for the term mentioned in the complaint, had an accounting together, and, there being then differences between said county and said Hill in and about said Hill's accounts as such treasurer with said county and for said term as to the amount of the credits to be given said Hill and the amount of the charges to be made against said Hill in said accounts, all such differences up to the first day of May, 1884, were on said 10th day of May adjusted and settled with said Hill as such treasurer by said county commissioners, and that upon and in and by such accounting, adjustment, and settlement the account between said Hill and said county was, on said last-mentioned day, stated and settled by and between said Hill as such treasurer for said term and said county commissioners, so as to show as of and on said 1st day of May, 1884, a balance then against said Hill as such treas.

urer for said term upon and by reason of such accounting, adjustment, statement, and settlement in the sum of twenty-nine thousand eight hundred and thirty-seven and $\frac{52}{100}$ — and no more, in which last-mentioned sum there were included moneys and credits of said county amounting to ten thousand five hundred and seventy-two and $\frac{86}{100}$ dollars and no more.

XVI.

38 That since the time embraced within and covered by the accounting and settlement mentioned in the fifteenth paragraph of this answer, and before the commencement of this action, said defendant Hill, while and as treasurer of said King county for said term, paid, laid out, and expended, at the special instance and request of said county, upon county orders of said county, duly signed and issued by the auditor of said county, divers sums of money, aggregating, to wit, fifty-nine thousand three hundred and fifty-two and $\frac{96}{100}$ dollars, and turned over to the respective supervisors of the road districts of said county the respective delinquent road taxes of said districts, aggregating another large sum of money, to wit, the sum of one thousand nine hundred and seventy-three and $\frac{36}{100}$ dollars, and before the commencement of this action and upon the expiration of said term, to wit, the first Monday of January, 1885, paid over to himself, who then became and was — at the time of such paying over was his own successor, immediately after said term as treasurer of said county, another large sum of money, to wit, fourteen thousand five hundred and sixty-nine and seventy-six one-hundredths dollars, to the use of said county, which said sum- so as aforesaid paid, laid out, and expended and turned-over and paid over were and are equal to or in excess of all moneys of said county that after said accounting came into or were in the possession of said Hill or said Hill became in anywise liable or acccountable for as such treasurer for said term to said
39 county, including all moneys and credits of said county in-clud*ing* in the balance pleaded in the fifteenth paragraph of this answer.

XVII.

And defendants further say that said account as stated and settled as aforesaid is just and true to the best of the knowledge and belief of these defendants.

XVIII.

And for a fourth separate and affirmative defense these defendants say:

XIX.

That on the 12th day of November, 1884, the plaintiff, by its board of county commissioners, and the defendant George D. Hill, while and as county treasurer of said King county for the term mentioned in the complaint, had an accounting together, and, there being then differences between said county and said Hill in and

about said Hill's accounts as such treasurer with said county and aforesaid term as to the amount of the credits to be given said Hill and the amount of the charges to be made against him in said accounts, all such differences up to the first day of November, 1884, were on said 12th day of November adjusted and settled with said Hill as such treasurer for said term by said county commissioners, and that upon and in and by such accounting, adjustment, and settlement the account between said Hill and said county was on
40 said last-mentioned day stated and settled by and between said Hill, as such treasurer for said term, and said county commissioners, so *so* as to show as of and on the said 1st day of November, 1884, a balance then due and owing from said Hill as such treasurer for said term to said county, upon and by reason of said accounting, adjustment, statement, and settlement, in the sum of seven thousand seven hundred and twenty-five dollars and twenty cents, and no more, and that since said accounting and settlement and before the commencement of this action said defendant Hill, while and as such treasurer for said term, paid, laid out, and expended, at the special instance and request of said county, upon county orders of said county, duly signed and issued by the auditor of said county, divers sums of money, aggregating, to wit, forty-two thousand two hundred and fifty-two and thirty-nine one-hundredths dollars, and turned over to the respective supervisors of the road districts of said county delinquent road taxes of said districts respect*fully*, aggregating a large sum of money, to wit, one hundred and $\frac{94}{100}$ dollars, and upon the expiration of said term, to wit, the 1st Monday of January, 1885, paid over to himself, who then became and was and at the time of such paying over was his own successor, immediately after said term as treasurer of said county, another large sum of money, to wit, fourteen thousand five hundred and sixty-nine and $\frac{76}{100}$ dollars, which said sum- so as aforesaid
41 paid, laid out, and expended and turned over and paid over were and are equal to or in excess of all moneys of said county that after said accounting came into or were in the possession of said Hill or said Hill became in anywise liable or accountable for as such treasurer for said term, including the sum so as aforesaid shown and settled to be due upon said accounting.

XX.

And these defendants further say that said account as stated and settled as aforesaid is just and true, to the best of the knowledge and belief of these defendants.

XXI.

And for a fifth separate and affirmative defense these defendants say:

XXII.

That on the 20th day of May, 1885, the plaintiff, by its board of county commissioners, and the defendant George D. Hill, who was then the duly elected, qualified, and acting treasurer of said King

county for the term next subsequent to the term mentioned in the complaint and had been such treasurer from the expiration of the term mentioned in the complaint up to that time, had an accounting, which said accounting was then had with said county by said defendant Hill as treasurer of said county as well for the term mentioned in the complaint as for the term next subsequent to the same,

42 and, there being then differences between said county and said Hill in and about said Hill's accounts as such treasurer with said county for said terms as to the amount of the credits to be given said Hill and the amount of the charges to be made against him in said accounts for said terms, all such differences up to the first day of May, 1885, were on said 20th day of May, 1885, adjusted and settled with said Hill as such treasurer by said county commissioners, and that upon and in and by such accounting, adjustment, and settlement the account between said Hill and said county was on said last-mentioned day stated and settled by and between said Hill as such treasurer for said terms and said county commissioners, so as to show as of and on said first day of May, 1885, a balance then due and owing from said Hill as such treasurer for said terms, upon and by reason of such accounting, adjustment, statement, and settlement, in the sum of fourteen thousand and two and forty-eight hundredths dollars and no more, which said sum was upon and in and by said accounting and statement of accounts charged against said defendant Hill as due and owing from him as treasurer of said county for said term next subsequent to the term mentioned in the complaint.

XXIII.

And these defendants further say that said account as stated and settled as aforesaid is just and true, to the best of the knowledge and belief of these defendants.

43–45 Wherefore these defendants pray that they be hence dismissed without day, and for a judgment against the plaintiff for costs.

GREENE, McNAUGHT, HANFORD & McGRAW,
Attorneys for said Defendants.

TERRITORY OF WASHINGTON, } ss:
County of King, }

George D. Hill, being first duly sworn, on oath says that he is one of the defendants named in the above-entitled action; that he has heard the foregoing answer read, knows the contents thereof, and believes the same to be true.

GEORGE D. HILL.

Subscribed and sworn to before me this 23rd day of November, 1887.

C. H. HANFORD,
Notary Public in and for Washington Territory.

We hereby admit that service of the foregoing answer has been legally made upon us, the attorneys for the plaintiff in the therein-

entitled action, and that we have received a copy of said answer, at the county of King, W. T., this — day of November, 1887.

J. R. LEWIS & RONALD & PILES,
Attorneys for Plaintiff.

(Indorsed:) Filed this 23rd day of Nov., 1887. W. E. Ledgerwood, clerk, by H. T. Hannon, deputy clerk.

46 In the District Court of the Third Judicial District of Washington Territory, Holding Terms at Seattle for the Counties of King and Kitsap.

THE COUNTY OF KING, Plaintiff,
vs.
GEORGE D. HILL, HENRY L. YESLER, JAMES McNAUGHT, JOHN LEARY, J. W. GEORGE, D. N. HYDE, ELISHA P. FERRY, and JOSEPH F. McNAUGHT, Defendants.

No. 5475. Answer of Yesler and Leary.

The defendants Henry L. Yesler and John Leary, by Burke and Haller, their attorneys, for answer to the complaint in the above-entitled action say:

I.

They deny that the sums of money in the third paragraph of the complaint mentioned or any sum or sums of money had or received by said defendant Hill amount or amounted to the sum of or aggregated or aggregate the sum of two hundred and thirty-eight thousand six hundred and eighty-five and $\frac{8}{100}$ dollars or any other or greater sum than one hundred and forty-three thousand two hundred and eighty-five dollars.

II.

They deny that the said Hill wholly or at all refused or neglected to account to the proper or any authority or to pay over to
47 his successor in office at the close of his said term or at any time the sum of five thousand five hundred and thirty-nine and $\frac{5}{100}$ dollars, mentioned in the fourth paragraph of said complaint, or any sum or amount whatever, or applied or converted said sum or any sum whatever to his own use or contrary to his duty as such treasurer or any duty or contrary to the conditions or any conditions of the said bond or otherwise; and they deny each and every allegation contained in the fourth paragraph of said complaint.

3.

They deny that in the accounts kept by the treasurer and auditor of said county or in any account or accounts or the settlements had with the board for or on account of said fund or any settlements or settlement the said Hill was charged with having had and received or charged at all with the sum of two hundred and thirty-three thousand three hundred and one and $\frac{3}{100}$ dollars, mentioned in the

fifth paragraph of said complaint, or with any other or greater sum than one hundred and forty-three thousand two hundred and eighty-five dollars. They deny that by said Hill as such treasurer there was in anywise collected said sum of two hundred and thirty-three thousand three hundred and one and three-hundredths dollars or any other or greater sum than one hundred and forty-three thousand two hundred and eighty-five dollars. They deny that by mistake or error or at all the sum of five thousand three hundred
48 and eighty-four and $\frac{86}{100}$ dollars, mentioned in said fifth paragraph, or any sum whatever was overlooked by said board and auditor or either of them. They deny that said sum *sum* or any sum whatever was not charged to said Hill with which he was justly or at all chargeable. They deny that said Hill wholly or at all neglected or neglects, refused or refuses, to account for said sum or any sum whatever, and they deny each and every allegation contained in said fifth paragraph and not hereinbefore expressly admitted.

4.

They deny that any credit mentioned in the sixth paragraph of the complaint or any credit or any part of any credit was given by mistake or error on the part of said treasurer, auditor, and board or any of them. They deny that said Hill neglected or refused to account for the sum of one hundred and fifty-four and $\frac{60}{100}$ dollars, mentioned in the sixth paragraph of the complaint, or any sum whatever. They deny that said sum or any sum whatever was in excess of credits or credit actually or at all given over credits or credit to which he was actually or at all entitled. They deny that he ever did or does neglect or refuse to account for said sum or any part thereof or any sum whatever or has converted the same or any part thereof or any sum whatever to his own use; and they
49 deny each and every allegation of the sixth paragraph of the complaint, except that these defendants admit that said Hill received the credits mentioned in said paragraph.

5.

And for a first separate and affirmative defense these defendants say:

6.

That during all the term of the office of treasurer of said King county next preceding the term of office mentioned in the complaint the defendant George D. Hill was the duly elected, qualified, and acting treasurer of said King county, as well for the term mentioned in the complaint as for the term next preceding the same, — attended with his books and vouchers before the board of county commissioners of his county, the said county of King, at the May session, in the year 1883, and settled his accounts before said board at that time, and in such settlement said board allowed him as such treasurer the following credits:

First. Twenty-nine thousand nine hundred and thirty-seven and $\frac{15}{100}$ dollars, being the amount of principal and interest paid on county and road orders subsequent to the last preceding settlement. Second. Seven thousand five hundred and eighty-six and $\frac{30}{100}$ dollars, being the amount paid territorial treasurer during the preceding fiscal year, as per voucher. Third. Forty-three thousand seven hundred and seventy-seven and $\frac{42}{100}$ dollars, being amount paid school districts during the preceding fiscal year. Fourth. Two thousand three hundred and thirteen dollars and ninety-eight cents, being amount paid *board* supervisors during the preceding fiscal year. Fifth. Three thousand five hundred and sixty-one and $\frac{97}{100}$ dollars, being the amount allowed by law for his compensation. Sixth. One hundred and ten and $\frac{75}{100}$ dollars, being such other credits as he was at said May session and for said fiscal year entitled by law to receive.

50

7.

That said defendant George D. Hill, as treasurer of said King county for the term mentioned in the complaint, attended with his books and vouchers before the board of county commissioners of his, the said King, county, at its May session, in the year 1884, and settled his accounts before said board at that time, and in such settlement, which was a complete settlement, said board allowed him, as such treasurer, the following credits—that is to say, first, fifty-four thousand four hundred and ninety-two and $\frac{45}{100}$ dollars, being the amount of principal and interest paid on county and road orders subsequent to the last preceding settlement; second, eighteen thousand five hundred and fifteen and $\frac{42}{100}$ dollars, being the amount paid territorial treasurer during the next preceding fiscal year, as per voucher; third, thirty thousand one hundred and sixty-two and six one-hundredths dollars, being the amount paid school districts during the next preceding fiscal year; fourth, two thousand six hundred and twenty-nine & $\frac{60}{100}$ dollars, being the amount paid road supervisor- during the next preceding year; fifth, four thousand four hundred and seventy-three and $\frac{63}{100}$ dollars, being the amount allowed by law for the compensation of said Hill as said county treasurer for said fiscal year, and — dollars, being such other credit as he was at said May session entitled by law to receive.

51

8.

That the defendant George D. Hill was the duly elected, qualified, and acting treasurer of said county of King for and during all the term of office of such treasurer next subsequent to the term mentioned in the complaint, and on and after the expiration of the term mentioned in the complaint became and was his own successor in said office for and during said next subsequent term, and that said defendant Hill, as treasurer of said King county for the term mentioned in the complaint and as such treasurer for said next subsequent term, attended with the books and vouchers before the board of county commissioners of his county, the said county of King, at

its May session, in the year 1885, and settled his accounts before said board at that time, and in such settlement, which was a complete settlement, said board allowed him as such treasurer for said terms the following credits—that is to say:

First. Seventy thousand five hundred and eighty-two and forty-eight one-hundredths dollars, being the amount of principal
52 and interest paid on county and — orders subsequent to the last preceding annual settlement.

Second. Sixteen thousand seven hundred and twenty-seven and $\frac{36}{100}$ dollars, being the amount paid territorial treasurer during the next preceding fiscal year, as per voucher.

Third. Thirty-seven thousand two hundred and seventy and $\frac{91}{100}$ dollars, being the amount paid school districts during the next preceding year.

Fourth. Two thousand six hundred and forty dollars and three cents, being the amount paid road supervisors during the next preceding fiscal year.

Fifth. Four thousand three hundred and thirty-two and $\frac{97}{100}$ dollars, being the amount allowed by law for the compensation of said Hill as said county treasurer for said fiscal year, and — dollars, being such other credits as he was at said May session and for said fiscal year entitled by law to receive.

9.

That at the end of the fiscal year covered by the settlement last above pleaded there were remaining and being in the possession of said Hill as treasurer of said county moneys for which he was then accountable as such treasurer, amounting to a large sum, to wit, the sum of fourteen thousand and two and $\frac{48}{100}$ dollars, over and above all credits in this defense pleaded, and that said sum and the
53 credits allowed as aforesaid in said settlement then equalled or exceeded in amount all moneys that at and after the beginning of the fiscal year covered by the first of said settlements and before and up to and including the end of the fiscal year covered by the last of said settlements came into or were in the possession of said Hill or said Hill became in anywise liable or accountable for as such treasurer.

10.

That said accounts and credits and each of them in this defense pleaded and as settled and allowed as aforesaid are just and true, to the best of the knowledge and belief of these defendants.

11.

And for a second and separate and affirmative defense these defendants say:

12.

They repeat and make part of this defense each and every allegation contained in the first affirmative defense above pleaded down to and including the word "term," in the fifth line of the eighth paragraph of this answer, and further say:

13.

That after the end of the fiscal year covered by the settlements last above pleaded in this defense and before and up to the expiration of the term of office mentioned in the complaint said de-
54 fendant Hill, while and as treasurer for said term, paid, laid out, and expended, at the special instance and request of said county, upon county orders of said county, duly signed and issued by the auditor of said county, divers sums of money, aggregating, to wit, fifty-nine thousand and three hundred and fifty-two and $\frac{96}{100}$ dollars, and turned over to the respective supervisors of the road district of said county the respective delinquent road taxes of said districts, aggregating another large sum of money, to wit, the sum of one thousand nine hundred and seventy-three and $\frac{36}{100}$ dollars, and paid out at the special instance and request of the several school districts of said county on the warrants of the respective directors of the respective districts, countersigned in the case of each warrant by the district clerk of the district and properly endorsed by the holders respectively of said warrants, divers other sums of money of said districts respectively, aggregating, to wit, thirty-three thousand eight hundred and thirteen and $\frac{74}{100}$ dollars, and paid into the territorial treasury and forwarded to the territorial treasurer, in such manner as such territorial treasurer directed, divers other sums of money of said Territory, aggregating, to wit, nineteen thousand one hundred and nine and sixty-eight one-hundredths dollars; and upon the expiration of said term, to wit, on the first Monday of January, 1885, paid over to himself, who was then, as aforesaid, his own successor as treasurer of said
55 county, another large sum of money, to wit, the sum of thirty-nine thousand two hundred and sixty-two and $\frac{57}{100}$ dollars, which said sums so as aforesaid paid, laid out, and expended and paid and forwarded and paid over, together with the credits allowed, as in this defense pleaded, upon the settlements in this defense mentioned, and together with four per cent. of all moneys received and paid out by said Hill as treasurer of said county between the end of the fiscal year last above mentioned and the expiration of said term, were and are in excess of all moneys that at and after the beginning of the fiscal year embraced in the first of said settlements and before and up to the expiration of said term came into or were in the hands of said Hill or said Hill became in anywise liable or accountable for as such treasurer.

14.

And for a third separate and affirmative defense these defendants say—

15.

That on the 20th day of May, 1884, the plaintiff, by its board of county commissioners, and the defendant George D. Hill, while and as county treasurer of said King county for the term mentioned in the complaint, had an accounting together, and, there being then differences between the county and said Hill in and about said Hill's

accounts as such treasurer with said county and for said term as to the amount of the credits to be given said Hill and the
56 amount of the charges to be made against said Hill in said accounts, all such differences up to the first day of May, 1884, were on said 10th day of May adjusted and settled with said Hill, as such treasurer, by said county commissioners, and that upon and in and by such accounting, adjustment, and settlement the account between said Hill and said county was on said last-mentioned day stated and settled by and between said Hill, as such treasurer for said term, and said county commissioners, so as to show as of and on said first day of May, 1884, a balance then against said Hill, as such treasurer for said term, upon and by reason of such accounting, adjustment, statement, and settlement, in the sum of twenty-nine thousand eight hundred and thirty-seven and $\frac{52}{100}$ dollars and no more, in which last-mentioned sum there were included moneys and credits of said county amounting to ten thousand five hundred and seventy-two and $\frac{36}{100}$ dollars and no more.

16.

That since the time embraced within and covered by the accounting and settlement mentioned in the fifteenth paragraph of this answer, and before the commencement of this action, said defendant Hill, while and as treasurer of said King county for said term, paid, laid out, and expended, at the special instance and request of said county, upon county orders of said county, duly signed and issued by the auditor of said county, divers sums of money, aggre-
57 gating, to wit, fifty-nine thousand three hundred and fifty-two and $\frac{96}{100}$ dollars, and turned over to the respective supervisors of the road districts of said county the respective delinquent road taxes for said districts, aggregating another large sum of money, to wit, the sum of one thousand nine hundred and seventy-three and $\frac{36}{100}$ dollars, and before the commencement of this action and upon the expiration of said term, to wit, the first Monday of January, 1885, paid over to himself, who then became and was and at the time of such paying over was his own successor, immediately after said term as treasurer of said county, another large sum of money, to wit, fourteen thousand five hundred and sixty-nine and $\frac{76}{100}$ dollars, to the use of said county, which said sums so as aforesaid paid, laid out, and expended and turned over and paid over were and are equal to or in excess of all moneys of said county that after said accounting came into or were in the possession of said Hill or said Hill became in anywise liable or accountable for, as such treasurer for said term, to said county, including all moneys and credits of said county included in the balance pleaded in the fifteenth paragraph of this answer.

17.

And defendants further say that said account as stated and settled as aforesaid is just and true, to the best of the knowledge and belief of these defendants.

18.

58 And for a fourth separate and affirmative defense these defendants say:

19.

That on the 12th day of November, 1884, the plaintiff, by its board of county commissioners, and the defendant George D. Hill, while and as county treasurer of said King county for the term mentioned in the complaint, had an accounting together, and, there being then differences between the said county and said Hill in and about said Hill's accounts as such treasurer with said county and for said term as to the amounts of the credits to be given said Hill and the amount of the charges to be made against him in said accounts, all such differences up to the first day of November, 1884, were on said 12th day of November adjusted and settled with said Hill as such treasurer for such term by said county commissioners, and that upon and in and by such accounting, adjustment, and settlement the account between said Hill and said county was on said last-mentioned day stated and settled by and between said Hill as such treasurer for said term and said county commissioners, so as to show as of and on said first day of November, 1884, a balance then due and owing from said Hill as such treasurer for said term to said county, upon and by reason of said accounting, adjustment, statement, and settlement, in the sum of seven thousand seven hundred and twenty-five dollars and twenty cents and no more, and that since said accounting and settlement, and before the commencement of this action, said defendant Hill, while and as such treasurer

59 for said term, paid, laid out, and expended, at the special instance and request of said county, upon county orders of said county, duly signed and issued by the auditor of said county, divers sums of money, aggregating, to wit, forty-two thousand two hundred and fifty-two and $\frac{39}{100}$ dollars, and turned over to the respective supervisors of the road districts of said county the delinquent road taxes of said districts respectively, aggregating a large sum of money, to wit, one hundred and $\frac{94}{100}$, — and upon the expiration of said term, to wit, on the first Monday of January, 1885, paid over to himself, who then became and was and at the time of such paying over was his own successor, immediately after said term as treasurer of said county, another large sum of money, to wit, fourteen thousand five hundred and sixty-nine and $\frac{76}{100}$ dollars, which said sums so as aforesaid paid, laid out, and expended and turned over and paid over were and are equal to or in excess of all moneys of said county that after said accounting came into or were in the possession of said Hill or said Hill became in anywise liable or accountable for as such treasurer for said term, including the sum so as aforesaid shown and settled to be due upon said accounting.

20.

And these defendants further say that said account as stated and settled as aforesaid is just and true, to the best of the knowledge and belief of these defendants.

60 21.

And for a fifth separate and affirmative defense these defendants say:

22.

That on the 20th day of May, 1885, the plaintiff, by its board of county commissioners, and the defendant George D. Hill, who was then the duly elected, qualified, and acting treasurer of said King county for the term next subsequent to the term mentioned in the complaint and had been such treasurer from the expiration of the term mentioned in the complaint up to that time, had an accounting, which said accounting was then had with said county by said defendant Hill, as treasurer of said county, as well for the term mentioned in the complaint as for the term next subsequent to the same, and, there being then differences between said county and said Hill in and about said Hill's accounts as such treasurer with said county for said term as to the amount of the credits to be given said Hill and the amount of the charges to be made against him in said accounts for said term, all such differences up to the first day of May, 1885, were, on said 20th day of May, 1885, adjusted and settled with said Hill as such treasurer by said county commissioners, and that upon and in and by such accounting, adjustment, and settlement the account between said Hill and said county was, on said last-mentioned day, stated and settled by and between said Hill as such treas-
61 urer for said terms and said county commissioners, so as to show as of and on said first day of May, 1885, a balance then due and owing from said Hill as such treasurer for said terms, upon and by reason of such accounting, adjustment, statement, and settlement, in the sum of fourteen thousand and two and forty-eight hundredths dollars and no more, which said sum was, upon and in and by said accounting and statement of account, charged against said defendant Hill as due and owing from him as treasurer of said county for said term next subsequent to the term mentioned in the complaint.

23.

And these defendants further say that said account as stated and settled as aforesaid is just and true, to the best of the knowledge and belief of these defendants.

Wherefore these defendants pray that they be hence dismissed without day, and for a judgment against the plaintiff for costs.

BURKE & HALLER,
Attorneys for said Defendants Yesler & Leary.

TERRITORY OF WASHINGTON, }
County of King, } *ss:*

Henry L. Yesler & John Leary, being first duly sworn, each for himself on oath says that he is one of the defendants in the above-entitled action; that he has heard the foregoing answer read,
62 knows the contents thereof, and believes the same to be true.

JOHN LEARY.
H. L. YESLER.

Subscribed and sworn to before me this first day of December, 1887.

B. J. TALLMAN,
Notary Public in and for King County & Washington Territory.

Received, at Seattle, in King county, Washington Territory, this 2nd day of December, 1887, a true copy of the foregoing.

J. R. LEWIS & RONALD & PILES,
Attorneys for Pl'ff.

(Indorsed:) Filed Dec. 2nd, 1877. W. E. Ledgerwood, clerk, by H. T. Hannon, deputy.

63 In the District Court of the Third Judicial District of Washington Territory, Holding Terms at Seattle for the Counties of King and Kitsap.

THE COUNTY OF KING, Plaintiff,
vs.
GEORGE D. HILL, HENRY L. YESLER, JAMES McNAUGHT, JOHN LEARY, J. W. GEORGE, D. N. HYDE, ELISHA P. FERRY, and JOSEPH F. McNAUGHT, Defendants.
No. 5475. Reply.

The plaintiff replies to the affirmative defenses set out in the answer of defendants George D. Hill, James McNaught, J. W. George, D. N. Hyde, Elisha P. Perry, and Joseph F. McNaught, and says:

I.

Denies each and every allegation set forth and contained in paragraph VI of answer save and except that he was the treasurer of said county as well for the term mentioned in complaint as for the term next preceding the same, and that he received the credits named at the May session of 1883 of said board of commissioners.

II.

Denies each and every allegation set forth and contained in paragraph VII save and except that he received the credits therein set forth at the May term, 1884, of said board of county commissioners.

III.

64 Denies each and every allegation set forth and contained in paragraph VIII of said answer save and except said Hill was the duly elected and qualified treasurer of said county for the term next subsequent to the term mentioned in said complaint and became his own successor, and that he received the credits therein stated.

IV.

Denies each and every allegation set forth and contained in paragraph IX of said answer.

V.

Denies each and every allegation set forth and contained in paragraph X of said answer.

VI.

Denies each and every allegation set forth and contained in paragraph XII save and except that he was elected and acting as treasurer for the terms therein stated, and that he received the credits therein stated.

VII.

Denies each and every allegation set forth and contained in paragraph XIII of said answer.

VIII.

Denies each and every allegation set forth and contained in paragraph XV of said answer.

IX.

Denies each and every allegation set forth and contained in paragraph XVI of said answer.

X.

65 Denies each and every allegation set forth and contained in paragraph XVII of said answer.

XI.

Denies each and every allegation set forth and contained in paragraph XIX of said answer, save and except that he was his own successor.

XII.

Denies each and every allegation set forth and contained in paragraph XX of said answer.

XIII.

Denies each and every allegation set forth and contained in paragraph XXII of said answer, save and except that said Hill was treasurer as therein stated.

XIV.

Denies each and every allegation set forth and contained in paragraph XXIII of answer.

XV.

Denies that said Hill at any time made any settlement whatever with the board of commissioners or other authority of said county for the whole or any part of the funds by him received as such treasurer for the term set out in complaint.

XVI.

And as new matter constituting a defense to the affirmative matter stated in paragraphs VI, VII, VIII plaintiff says:

66 That the credits named and given as stated in paragraph VI of said answer were so given by mistake and error in this, to wit:

That said Hill was entitled to a credit for and on account of principal and interest paid on county and road orders only in the sum of $29,921.91, and that by mistake he received said credit of $29,937.15.

XVII.

That the credits named and given as stated in paragraph VII of said answer were so given by mistake and error in this, to wit: Said Hill was entitled to a credit for and on account of principal and interest paid on county and road orders only in the sum of $54,403.04, and that by mistake and error he received said credit of $54,492.45.

XVIII.

That the credits named and given as stated in paragraph VIII of said answer at the May term, 1885, were so given by mistake and error in this, to wit:

That he was entitled to a credit for and on account of principal and interest paid on county and — orders subsequent to the last preceding annual settlement in sum of $69,476.54 only and by mistake and error he received said credit of $70,582.48, and he was entitled to a credit on account of his compensation in the sum of $4,310.86 only and by mistake and error he received such credit of $4,332.97.

67 & 68 Wherefore the plaintiff prays judgment as in said complaint prayed.

J. R. LEWIS AND
RONALD & PILES,
Attorneys for Plaintiff.

TERRITORY OF WASHINGTON, } ss:
County of King, }

Lyman Wood, being duly sworn, on oath says that he is the auditor of the County of King, said plaintiff in the above-entitled action; that he has heard the foregoing reply read, knows the contents thereof, and believes the same to be true; that he makes this affidavit as such auditor for said plaintiff.

[NOTARY SEAL.] LYMAN WOOD.

Subscribed and sworn to before me this 13th day of Dec., 1887.

ROSWELL SCOTT,
Notary Public in and for King County, Washington Territory.

Rec. true copy of the foregoing reply at Seattle, W. T., this 13th day of Dec., 1887, service of which is hereby admitted.

GREENE, McNAUGHT,
HANFORD & McGRAW,
Att'ys for Defendants.

Endorsed: Filed Dec. 13, 1887. W. E. Ledgerwood, clerk, by H. T. Hannon, dep. clerk.

69 In the District Court of the Third Judicial District of Washington Territory, Holding Terms at Seattle, for the Counties of King and Kitsap.

THE COUNTY OF KING, Plaintiff,
vs.
GEORGE D. HILL, HENRY L. YESLER, JAMES McNaught, John Leary, J. W. George, D. N. Hyde, Elisha P. Ferry, and Joseph F. McNaught, Defendants.

No. 5475. Reply.

The plaintiff replies to the affirmative defenses set out in the answer of defendants H. L. Yesler and John Leary, and says:

I.

Denies each and every allegation set forth and contained in paragraph VI of answer, save and except that he was the treasurer of said county as well for the term mentioned in complaint as for the term next preceding the same, and that he received the credits named at the May session of 1883 of said board of commissioners.

II.

Denies each and every allegation set forth and contained in paragraph VII, save and except that he received the credits therein set forth at the May term, 1884, of said board of commissioners.

III.

70 Denies each and every allegation set forth and contained in paragraph VIII of said answer, save and except said Hill was the duly elected and qualified treasurer of said county for the term next subsequent to the term mentioned in said complaint, and became his own successor, and that he received the credits therein stated.

IV.

Denies each and every allegation set forth and contained in paragraph IX of said answer.

V.

Denies each and every allegation set forth and contained in paragraph X of said answer.

VI.

Denies each and every allegation set forth and contained in par-

agraph XII, save and except that he was elected and acted as treasurer for the terms therein stated and that he received the credits therein stated.

VII.

Denies each and every allegation set forth and contained in paragraph XIII of said answer.

VIII.

Denies each and every allegation set forth and contained in paragraph XV of said answer.

IX.

Denies each and every allegation set forth and contained in paragraph XVI of said answer.

X.

71 Denies each and every allegation set forth and contained in paragraph XVII of said answer.

XI.

Denies each and every allegation set forth and contained in paragraph XIX of said answer, save and except that he was his own successor.

XII.

Denies each and every allegation set forth and contained in paragraph XX of said answer.

XIII.

Denies each and every allegation set forth and contained in paragraph XXII of said answer, save and except that said Hill was treasurer as therein stated.

XIV.

Denies each and every allegation set forth and contained in paragraph XXIII of said answer.

XV.

Denies that said Hill at any time made any settlement whatever with the board of commissioners or other authority of said county for the whole or any part of the funds by him received as such treasurer for the term set out in complaint.

XVI.

And as new matter constituting a defense to the affirmative matter stated in paragraphs VI, VII, VIII plaintiff says:

72 That the credits named and given in paragraph VI of said answer were so given by mistake and error in this, to wit, that said Hill was entitled to a credit for and on account of principal and interest paid on county and road orders only in the sum of

$29,921.91, and that by mistake and error he received said credit of $29,937.15.

XVII.

That the credits named and given as stated in paragraph VII of said answer were so given by mistake and error, in this, to wit: Said Hill was entitled to a credit for and on account of principal and interest paid on county and road orders only in the sum of $54,403.04, and that by mistake and error he received said credit of $54,492.45.

XVIII.

That the credits named and given as stated in paragraph VIII of said answer at the May term, 1885, were so given by mistake and error, in this, to wit: That he was entitled to a credit for and on account of principal and interest paid on county and — orders subsequent to the last preceding annual settlement in — sum of $69,476.54 only — by mistake and error he received said credit of $70,582.48, and he was entitled to a credit on account of his compensation in the sum of $4,310.86 only and by mistake and error he received such credit of $4,332.97.

Wherefore plaintiff prays judgment as in said complaint prayed.

(Signed) J. R. LEWIS AND
RONALD & PILES,
Attorneys for Plaintiff.

73–78 TERRITORY OF WASHINGTON, } ss:
County of King, }

Lyman Wood, being duly sworn, on oath says that he is the auditor of the County of King, said plaintiff in the above-entitled action; that he has heard the foregoing reply read, knows the contents thereof, and believes the same to be true; that he makes this affidavit as such auditor for plaintiff.

[NOTARY SEAL.] LYMAN WOOD.

Subscribed and sworn to before me this 13th day of Dec., 1887.
ROSWELL SCOTT,
Notary Public in and for King County, Washington Territory.

Received a true copy of the foregoing reply this 13th day of Dec., 1887, at Seattle, W. T., service of which is hereby admitted.

——— ———,
Att'ys for Def'ts.

(Endorsed:) Filed Dec. 13, 1887. W. E. Ledgerwood, clerk, by H. T. Hannon, deputy clerk.

79 TERRITORY OF WASHINGTON, }
County of King. }

In the District Court of the Third Judicial District, Holding Terms at Seattle.

THE COUNTY OF KING, Plaintiff, }
vs. }
GEORGE D. HILL, HENRY L. YESLER, James McNaught, John Leary, J. W. George, D. N. Hyde, Elisha P. Ferry, and Joseph F. McNaught, Defendants. } No. 5475. Motion to Strike out Part of the Reply.

Now come the defendants George D. Hill, James McNaught, J. W. George, D. N. Hyde, Elisha P. Ferry, and Joseph F. McNaught, by their attorneys, Greene, Hanford, McNaught & McGraw, and move the court to strike from the plaintiff's reply herein all of paragraphs 16, 17, and 18 thereof on the following grounds, to wit:

1st. The matter in said paragraphs contained is redundant.

2nd. The matter in said paragraphs contained is irrelevant.

GREENE, McNAUGHT,
HANFORD & McGRAW,
Attorneys for said Defendants.

We hereby admit that service of the foregoing motion has been legally made upon us, the attorney- for the plaintiff in the therein-entitled action, and that we have received a copy of said
80 motion, at the county of King, W. T., this 14th day of December, 1887.

J. R. LEWIS AND
RONALD & PILES,
Attorney- for Plaintiff.

(Indorsed:) Filed this 15th day of Dec., 1887. W. E. Ledgerwood, clerk, H. T. Haunon, deputy clerk.

81 In the District Court of the Third Judicial District of the Territory of Washington, Holding Terms at Seattle.

THURSDAY, *December 15th*, 1887.

THE COUNTY OF KING, Plaintiff, }
vs. } No. 5475. Motion to Strike Denied.
GEORGE D. HILL *et al.*, Defendants. }

Comes now the defendants Geo. D. Hill, James McNaught, J. W. George, D. N. Hyde, Elisha P. Ferry, and Joseph McNaught, by their attorneys, Greene, McNaught, Hanford & McGraw, and moves the court to strike from plaintiff's reply on file herein all of paragraphs 16, 17, and 18 thereof, for the reason that matter contained therein is redundant and irrelevant. After hearing the argument of counsel and being fully advised in the premises the court denies said mo-

tion; to which ruling of the court defendants except, and their exception is allowed.

R. A. JONES, *Judge.*

Entered Journal "O," page 170.

82 TERRITORY OF WASHINGTON, } *County of King.* }

In the District Court of the Third Judicial District, Holding Terms at Seattle.

THE COUNTY OF KING, Plaintiff, *vs.* GEORGE D. HILL, HENRY L. YESLER, James McNaught, John Leary, J. W. George, D. N. Hyde, Elisha P. Ferry, and Joseph McNaught, Defendants. } No. 5475. Motion to Make More Definite and Certain.

Come now the defendants George D. Hill, James McNaught, J. W. George, D. N. Hyde, Elisha P. Ferry, and Joseph McNaught, by their attorneys, and move the court to require the plaintiff to make more definite and certain paragraphs 16, 17, & 18 of its reply herein, so as to specifically and accurately describe and enumerate the mistake or mistakes and error or errors alleged therein.

GREENE, McNAUGHT, HANFORD & McGRAW, *Attorneys for said Defendants.*

We hereby admit that service of the foregoing motion has been legally made upon us, the attorneys for the plaintiff in the therein-entitled action, and that we have received a copy of said motion at the county of King, W. T., this 15th day of December, 1887.

J. R. LEWIS AND RONALD & PILES, *Attorneys for Plaintiff.*

83 Indorsed: Filed this 16th day of Dec., 1887. W. E. Ledgerwood, clerk, by H. T. Hannon, deputy clerk.

84 In the District Court of the Third Judicial District of the Territory of Washington, Holding Terms at Seattle.

FRIDAY, *December 16th*, 1887.

THE COUNTY OF KING *vs.* GEORGE D. HILL *et al.* } No. 5475. Motion to Make More Definite and Certain.

Now, on this 16th day of December, A. D. 1887, comes the defendants George D. Hill, James McNaught, J. W. George, D. N. Hyde, Elisha P. Ferry, and Joseph McNaught and move the court to require the plaintiff to make more definite and certain paragraphs 16, 17, and 18 of its reply on file herein, J. T. Ronald and J. R. Lewis, Esqs., appearing for plaintiff, and Greene, McNaught, Hanford & Mc-

Graw appearing for the defendants. After hearing the arguments of respective counsel and being fully advised in the premises, the court denies said motion, to which ruling of the court defendants except, and their exception is allowed.

R. A. JONES, *Judge.*

Entered Journal "O," page- 191 and 192.

85 TERRITORY OF WASHINGTON, } *ss:*
County of King, }

In the District Court of the Third Judicial District, Holding Terms at Seattle.

THE COUNTY OF KING, Plaintiff,
vs.
GEORGE D. HILL, HENRY L. YESLER, JAMES McNAUGHT, JOHN LEARY, J. W. GEORGE, D. N. HYDE, ELISHA P. FERRY, and JOSEPH F. McNAUGHT, Defendants. } No. 5475. Demurrer to Reply.

Come now the above-named defendants, James McNaught, J. W. George, D. N. Hyde, Elisha P. Ferry, and Joseph F. McNaught, by their attorneys, and demur to the new matter contained in the plaintiff's reply herein on the ground that it appears on the face thereof that said new matter is not a sufficient reply to the facts stated in the answer.

GREENE, McNAUGHT,
HANFORD & McGRAW,
Attorneys for said Defendants.

We hereby admit that service of the foregoing demurrer has been legally made upon us, the attorneys for the plaintiff in the therein-entitled action, and that — have received a copy of said demurrer at the county of King, W. T., this 16th day of December, 1887.

——— ———,
Attorney- for Plaintiff.

Indorsed: Filed this 16th day of Dec., 1887. W. E. Ledgerwood, clerk, by H. T. Hannon, deputy clerk.

86 In the District Court of the Third Judicial District of the Territory of Washington, Holding Terms at Seattle.

FRIDAY, *December 16th*, 1887.

THE COUNTY OF KING
vs.
GEORGE D. HILL *et al.* } No. 5475. Demurrer to Reply Overruled and Exception Allowed.

Now, on this 16th day of December, A. D. 1887, come the defendants James McNaught, J. W. George, D. N. Hyde, Elisha P. Ferry, and Joseph F. McNaught and demur to the new matter contained in the plaintiff's reply on file herein "on the ground that it

appears on the face thereof that said new matter is not a sufficient reply to the facts stated in the answer," J. T. Ronald and J. R. Lewis, Esqs., appearing for plaintiff and Greene, McNaught, Hanford and McGraw appearing for the defendants. After hearing the arguments of respective counsel and being fully advised in the premises, the court overrules said demurrer; to which ruling of the court defendants except, and their exception is allowed.

R. A. JONES, *Judge.*

Entered Journal " O," page 193.

87 TERRITORY OF WASHINGTON, } ss :
County of King, }

In the District Court of the Third Judicial District of Washington Territory, Holding Terms at Seattle for the Counties of King and Kitsap.

THE COUNTY OF KING, Pl't'ff,
vs.
GEORGE D. HILL, HENRY L. YESLER, James McNaught, John Leary, J.W. George, D.N. Hyde, Elisha P. Ferry, and Joseph F. McNaught, Defendants. } No. 5475. Motion to Strike Portion of Reply.

Come now the defendants Henry L. Yesler and John Leary, by their attorneys, Burk & Haller, and move the court to strike from the plaintiff's reply herein all of paragraphs 16, 17, and 18 thereof on the following grounds, to wit:

1st. The matter in said paragraphs contained is redundant.

2nd. The matter in said paragraphs contained is irrelevant.

BURKE & HALLER,
Attorneys for Defendants Yesler and Leary.

Received at Seattle, King county, Washington Territory, this 15th day of December, 1887, a true and correct copy of the foregoing.

J. R. LEWSIS AND RONALD & PILES,
Attorneys for Plaintiff.

(Indorsed:) Filed this 15th day of December, A. D. 1887. W. E. Ledgerwood, clerk, by H. T. Hannon, deputy clerk.

88 In the District Court of the Third Judicial District of the Territory of Washington, Holding Terms at Seattle.

FRIDAY, *December 16th,* 1887.

THE COUNTY OF KING
vs.
GEORGE D. HILL *et al.* } No. 5475. Motion to Strike Denied and Exception Allowed.

Now, on this 16th day of December, A. D. 1887, come the defendants Henry L. Yesler and John Leary and move the court to strike

from the plaintiff's reply on file herein all of paragraphs 16, 17, and 18 thereof on the grounds that the matter contained in said paragraphs is redundant and irrelevant, plaintiff being present by J. T. Ronald and J. R. Lewis, Esqs., and defendants by Burke & Haller, Esqs. After hearing the arguments of respective counsel and being fully advised in the premises, the court denies said motion; to which ruling of the court defendants except, and their exception is allowed.

R. A. JONES, *Judge.*

Entered Journal "O," page 194.

89 In the District Court of the Third Judicial District of Washington Territory, Holding Terms at Seattle for the Counties of King and Kitsap.

THE COUNTY OF KING, Plaintiff,
vs.
GEORGE D. HILL, HENRY L. YESLER, JAMES McNAUGHT, JOHN LEARY, J. W. GEORGE, D. N. HYDE, ELISHA P. FERRY, and JOSEPH McNAUGHT, Defendants.

No. 5475. Motion to Make More Definite and Certain.

Come now the defendants Henry L. Yesler and John Leary, by their attorneys, Burke & Haller, and move the court to require the plaintiff to make more definite and certain paragraphs 16, 17, and 18 of its reply herein, so as to specifically and accurately describe and enumerate the mistake or mistakes and error or errors alleged therein.

BURKE & HALLER,
Attorneys for Defendants Yesler & Leary.

Received at Seattle, King county, Washington Territory, this 17th day of December, 1887, a true and correct copy of the foregoing.

J. R. LEWIS AND RONALD & PILES,
Attorneys for Plaintiff.

Indorsed: Filed Dec. 17, A. D. 1887. W. E. Ledgerwood, clerk, by H. T. Hannon, deputy clerk.

90 In the District Court of the Third Judicial District of the Territory of Washington, Holding Terms at Seattle.

SATURDAY, *December 17th*, 1887.

THE COUNTY OF KING
vs.
GEORGE D. HILL *et al.*

No. 5475. Motion to Make More Definite and Certain Denied and Exception Allowed.

Now, on this 17th day of December, A. D. 1887, come the defendants Henry L. Yesler and John Leary and move the court to require the plaintiff to make more definite and certain paragraphs 16, 17, and 18 of its reply on file herein, J. T. Ronald and J. R. Lewis, Esqs., appearing for the plaintiff, and Burke and Haller, Esqs., ap-

pearing for the defendants. After hearing the arguments of respective counsel and being fully advised in the premises, the court denies said motion; to which ruling of the court the defendants except, and their exception is allowed.

R. A. JONES, *Judge.*

Entered Journal "O," page 198.

91 In the District Court of the Third Judicial District of Washington Territory, Holding Terms at Seattle for the Counties of King and Kitsap.

THE COUNTY OF KING, Plaintiff,
vs.
GEORGE D. HILL, HENRY L. YESLER, James McNaught, John Leary, J. W. George, D. N. Hyde, Elisha P. Ferry, and Joseph McNaught, Defendants. } No. 5475. Demurrer to Reply.

Now come the above-named defendants, Henry L. Yesler and John Leary, by their attorneys, Burke & Haller, and demur to the new matter contained in the plaintiff's reply herein on the ground that it appears on the face thereof that said new matter is not a sufficient reply to the facts stated in the answer.

BURKE & HALLER,
Attorneys for Defendants Yesler and Leary.

Received at Seattle, King county, Washington Territory, this 17th day of December, 1887, a true and correct copy of the foregoing.

J. R. LEWIS AND RONALD & PILES,
Attorneys for Plaintiff.

Indorsed: Filed Dec. 17th, A. D. 1887. W. E. Ledgerwood, clerk; H. T. Hannon, deputy clerk.

92 In the District Court of the Third Judicial District of the Territory of Washington, Holding Terms at Seattle.

SATURDAY, *December 17th*, 1887.

THE COUNTY OF KING
vs.
GEORGE D. HILL *et al.* } No. 5475. Demurrer to Reply Overruled and Exception Allowed.

Now, on this 17th day of December, A. D. 1887, come the defendants Henry L. Yesler and John Leary and demur to the new matter contained in the plaintiff's reply on file herein on the ground that it appears on the face thereof that said new matter is not a sufficient reply to the facts stated in the answer, J. T. Ronald and J. R. Lewis, Esqs., appearing for the plaintiff, and Burke and Haller appearing for the defendants. After hearing the arguments of respective counsel and being fully advised in the premises the court

overrules said demurrer; to which ruling of the court the defendants except, and their exception is allowed.

R. A. JONES, *Judge.*

Entered Journal "O," page 199.

93 In the District Court of the Third Judicial District of the Territory of Washington, Holding Terms at Seattle.

SATURDAY, *December* 17*th*, 1887.

THE COUNTY OF KING
vs.
GEORGE D. HILL *et al.* } No. 5475.

Now, on this 17th day of December, 1887, the matter of the appointment of a referee in the above-entitled cause coming on to be heard, and it appearing to the court that the parties hereto are unable to agree upon a referee, whereupon it is ordered by the court that A. R. Coleman, Esq., a practicing attorney of this court, be, and he is hereby, appointed referee in the above-entitled cause to take the testimony herein and to make his findings of fact and conclusions of law and report to the said court with all convenient speed. It is further ordered that A. C. Bowman, Esq., be, and he is hereby, appointed reporter to said referee, and that he reduce the evidence given before said referee to writing upon a typewriter, in triplicate, and furnish a copy thereof, as fast as each sheet is completed, to the attorneys for plaintiff and defendants respectively; and it is further ordered that the said referee convene his court at the city of Seattle, King county, Washington Territory, in the cham-
94 bers of the judge of said court, in said city, on Tuesday, the 27th day of December, 1887, at the hour of 9.30 a. m. of said day, unless the parties to said action agree upon some other time, and to proceed with the trial of said cause. It is further ordered that A. C. Bowman, the reporter, receive compensation for his services herein at the rate he receives compensation for reporting in court when in session, and that said reporter furnish such other copies to the parties on either side as they may order at their own expense.

R. A. JONES, *Judge.*

Entered Journal "O," page 201.

95 In the District Court of the Third Judical District of the Territory of Washington, Holding Terms at Seattle.

SATURDAY, *December* 31*st*, 1887.

THE COUNTY OF KING
vs.
GEORGE D. HILL *et al.* } No. 5475. Withdrawal of Counsel for Defendant- E. P. Ferry and Hyde.

Now, on this 31st day of December, A. D. 1887, comes Greene, McNaught, Hanford and McGraw into open court and give notice

that they withdraw from this cause as attorneys for defendants D. N. Hyde and E. P. Ferry.

R. A. JONES, *Judge.*

Entered Journal "O," page 238.

96 In the District Court of the Third Judicial District of Washington Territory, Holding Terms in the County of King.

THE COUNTY OF KING, Plaintiff,
vs.
GEORGE D. HILL, HENRY L. YESLER, JAMES MCNAUGHT, John Leary, J. W. George, D. N. Hyde, Elisha P. Ferry, and Joseph F. McNaught, Defendants. } No. 5475.

To the Honorable R. A. Jones, judge of the above-entitled court:

This cause came on for hearing at the judge's chambers, in the court-house, in the city of Seattle, on the 23rd day of January, 1888, before me, A. R. Coleman, referee herein, the plaintiff being represented by Messrs. Ronald & Pyles and J. R. Lewis, Esq., its attorneys, and the defendant- being represented by Messrs. Greene, McNaught, Hanford & McGraw, Messrs. Struve, Haines & McMicken, Messrs. Burke & Haller, and Eben Smith, Esq., their attorneys, and on said day and other days thereafter to which the trial before me was adjourned such proceedings were had, testimony of witnesses taken, and exhibits introduced in evidence as are set forth in detail in the accompanying bound volume of 81 pages of said proceedings and testimony of witnesses, which is herewith returned and filed, and as shown by the exhibits themselves, which are also herewith returned and filed, marked as "Plaintiff's Exhibits" Num-
97 bered 209 to 237, inclusive, and 471 to 475, inclusive, and 827 to 832, inclusive, and as "Defendants' Exhibits" Numbered 609, 610, 611.

The witnesses named in said record of the proceedings were each by me duly sworn according to law before testifying, and the testimony of each of said witnesses was taken down and recorded in my presence by the reporter appointed by the court to take down the evidence in this cause before the referee, and said volume contains a full, true, and correct report of all the evidence of witnesses taken before me, and said exhibits are all of the exhibits introduced in evidence on the trial of this cause before me as referee by the plaintiff and the defendants.

And now at this time, after carefully examining the pleadings of the parties and the evidence so taken and herewith returned, I find the following as all of the facts either admitted in said pleadings or proven by said evidence, to wit:

Findings of Fact.

First.

That — the general election held in November, 1882, the defendant George D. Hill was duly elected county treasurer of the County of

King, the plaintiff, for the term of two years from and after the first Monday in January, 1883.

Second.

98 That in said county of King, on the 13th day of November, 1882, the defendant George D. Hill, as principal, with the defendants Henry L. Yesler, James McNaught, John Leary, J. W. George, D. N. Hyde, Elisha P. Ferry, and Joseph F. McNaught as his sureties, duly executed his official bond to said county, as treasurer for said term, in the words and figures as set forth in the second paragraph of the complaint in this action, which bond was in the sum duly fixed by order of the board of county commissioners of said county and was duly approved by said board, and afterwards, on the first Monday in January, 1883, the said George D. Hill took the oath of office prescribed by law and entered upon the discharge of his duties as such county treasurer and continued to act as such for and during the full term for which he was elected.

Third.

That on divers days after the said first Monday in January, 1883, during said term of office as county treasurer and while he was acting as such, the said George D. Hill, as such treasurer, had and received for the use of said county of King divers large sums of money, amounting in the aggregate to the sum of three hundred thousand nine hundred and forty and $\frac{95}{100}$ ($300,940.95) dollars, as will more clearly appear by reference to an account of the receipts and disbursements of said Hill, as such treasurer, during said term, which accounts I have made and herewith submit as a part of this finding and this report.

99 Fourth.

That said George D. Hill did not account to the proper authorities as required by law for all of the money so received by him—that is to say, that of the money so received by him for the use of the plaintiff he did not account to the proper authorities for and did not pay over to his successors in office the sum of five thousand three hundred and fifty-eight and $\frac{96}{100}$ ($5,358.96) dollars, and that said failure to account for and to pay over to his successor in office said last-named sum was occasioned by and was the result of mistakes and errors on the part of said Hill and the county auditor of said King county in the book accounts kept by them respectively, and of mistakes and errors on the part of the board of county commissioners of said county in the settlement had by them with said Hill on account of the money so by him received as treasurer for the use of said county, as follows, to wit:

1st. On the tax-roll of 1883 the defendant Hill collected for the use of King county the sum of one hundred and six thousand three hundred and eight and $\frac{03}{100}$ ($106,308.03) dollars, as appears from the face of said tax-roll, but only charged himself in the account kept by him in his book, Ex. 101, p. 26, with having collected the sum of one hundred and four thousand and three hundred and

sixty-six and $\frac{79}{100}$ ($104,366.79) dollars, thus making a differ-
100 ence of one thousand nine hundred and forty-one and $\frac{24}{100}$ ($1,941.24) dollars between his actual receipts and his charge to himself, which last-named sum he did not account for or pay over to his successor in office.

2nd. At the May session, 1883, the defendant Hill was allowed credit by the board of county commissioners of King county in the sum of twenty-one thousand four hundred and ninety-two and $\frac{58}{100}$ ($21,494.58) dollars as the principal paid by him for redemption of county warrants during the fiscal year preceding April 30th, 1883, and said credit was so entered by the county auditor in the accounts kept by him with said Hill as treasurer, Ex. 213, p. 57, when in fact said Hill had only paid during said fiscal year for the redemption of the principal of county warrants the sum of twenty-one thousand four hundred and seventy-seven and $\frac{34}{100}$ ($21,477.34) dollars, thus making an over credit of fifteen and $\frac{24}{100}$ ($15.24) dollars allowed said Hill by said board and auditor.

3rd. At its May session, in 1884, the board of county commissioners of King county allowed said Hill credit in the sum of forty-one thousand three hundred and twenty-eight and fifty-one one-hundredths ($41,328.51) dollars as the amount paid by him for the redemption of the principal of county warrants during the fiscal year preceding April 30, 1884, and said credit was so entered by the county auditor in the accounts kept by him with said Hill as treasurer, Ex. 213, p. 72, when in fact said Hill had only paid
101 during said fiscal year for redemption of the principal of county warrants the sum of forty-one thousand two hundred and thirty nine and $\frac{10}{100}$ ($41,239.10) dollars, thus making an over-credit of eighty-nine and $\frac{41}{100}$ ($89.41) dollars allowed said Hill by said board and auditor.

4th. On July 27th, 1884, the defendant Hill received, for the use of King county, the sum of one hundred and twenty-five ($125.00) dollars from Thomas Cann, Ex. 226, with which he was not charged by the auditor and did not charge himself.

5th. On October 31st, 1884, defendant Hill paid a road-and-bridge warrant, Ex. 227, for twenty-eight ($28.00) dollars, and charged the same on his book, Ex. 101, p. 49, as seventy-eight ($78.00) dollars, and was allowed credit by the board of county commissioners and the auditor in the sum so charged by him, thus making an over-charge and over-credit allowed by said board and auditor in the sum of fifty ($50.00) dollars.

6th. On the tax-roll of 1884 the defendant Hill collected for the use of King county, Ex. 216, the sum of one hundred and one thousand three hundred and forty and $\frac{3}{100}$ ($101,340.03) dollars, but only charged himself in the accounts kept by him in his book, Ex. 101, pp. 48 and 50, with having collected the sum of ninety-eight thousand two hundred and one and $\frac{96}{100}$ ($98,201.96) dollars, thus making a di*ff*erence of three thousand one hundred and thirty-eight
102 and $\frac{7}{100}$ ($3,138.07) dollars between his actual receipts and his charge to himself; which last-named sum he did not account for and did not pay over to his successor in office.

Fifth.

That said erroneous charges made and credits given were so made and given by mistake and error on the part of said Hill, the said county auditor, and the said board of county commissioners.

Sixth.

That the defendant George D. Hill was the duly elected, qualified, and acting treasurer of King county, the plaintiff, for the whole of the term of said office next preceding the term thereof which begun on the first Monday in January, 1883, and as such treasurer, as well for that portion of the term preceding which was included in the then last-past fiscal year as for the term commencing on the first Monday in January, 1883, he attended with his books and vouchers before the board of county commissioners of King county at its May session, in the year 1883, and settled his accounts for said fiscal year before said board at that time, and in such settlement said board allowed him, as such treasurer, the credits mentioned and set forth in the sixth (6th) paragraph of the answer of the defendant- in this case.

103

Seventh.

That the defendant George D. Hill, as treasurer of said King county for the term which commenced on the first Monday in January, 1883, attended with his books and vouchers before the board of county commissioners of said county at its May session, in the year 1884, and settled his accounts before said board at that time, and in such settlement, which was a complete settlement for the fiscal year then last past, said board allowed him, as such treasurer, the credits mentioned and set forth in the seventh (7th) paragraph of the answers of the defendants in this case.

Eighth.

That the defendant George D. Hill was the duly elected, qualified, and acting treasurer of King county, and became and was his own successor in office for and during all of the term of said office next subsequent to the term thereof, which begun on the first Monday in January, 1883, and that he, as such treasurer, as well for that portion of the fiscal year then last past which was included in the term that begun on the first Monday in January, 1883, as for that portion thereof included in the then present term, attended with his books and vouchers before the board of county commissioners of King county at its May session, in the year 1885, and settled his accounts before said board at that time, and in such settlement, which was a complete settlement for the fiscal year then last past, said board allowed him, as such treasurer, for said fiscal year

104 the credits mentioned and set forth in the eighth (8th) paragraph of the answers of the defendants in this case.

Ninth.

That at the end of the fiscal year covered by the settlement mentioned in the preceding finding of fact, to wit, on the 30th day of

April, 1885, the defendant George D. Hill, as treasurer of King county, had in his possession the sum of fifteen thousand and fifty-eight and $\frac{68}{100}$ ($15,058.68) dollars, for which he was then accountable as such treasurer, over and above all the credits mentioned in my sixth, seventh, and eighth findings of fact, and that said sum, together with said credits and together with the amounts collected by said Hill on the tax-rolls of 1883 and 1884 in excess of the amounts with which he charged himself, as set forth in my fourth finding of fact, equalled in amount all moneys that at and after the beginning of the fiscal year covered by the settlement mentioned in my sixth finding of fact and before and up to and including the end of the fiscal year mentioned in my eighth finding of fact came into the possession of said Hill and for which he was in any way accountable as such treasurer, but that said accounts and credits were unjust and untrue in the particulars specified in my fourth finding of fact.

Fourth.

That the settlements mentioned in my sixth, seventh, and eighth findings of fact were the only settlements ever had between
105 the defendant Hill and the board of county commissioners of King county touching the moneys received and expended by him as treasurer of said county and his accounts and business as such treasurer for the term of said office which begun on the first Monday in January, 1883, and that the account of receipts and disbursements made by me and herewith submitted as a part of my third finding of fact correctly shows all sums of money received by said Hill and all sums paid out by him as such treasurer during said term, and from what sources the same were received and for what purposes paid out.

Conclusion of Law.

And as the law arising upon and applicable to the foregoing facts I report the following as my conclusion, to wit:

That the plaintiff, The County of King, is entitled to a judgment in this action against the defendants, George D. Hill, Henry L. Yesler, James McNaught, John Leary, J. W. George, D. N. Hyde, Elisha P. Ferry, and Joseph F. McNaught, for the sum of five thousand three hundred and fifty-eight and $\frac{96}{100}$ ($5,358.96) dollars, with interest thereon at the rate of ten (10) per cent. per annum from the — day of January, 1885, together with costs and disbursements of this action.

106 All of which findings of fact and conclusions of law are respectfully submitted.

A. R. COLEMAN, *Referee.*

The witness Wm. H. Hughes claims fees for three (3) days' attendance before me as a witness in this case.

A. R. COLEMAN, *Referee.*

Indorsed: Filed May 15, 1888. W. E. Ledgerwood, clerk. A. R. Coleman, referee.

Receipts from all sources.

1883.		Amount on hand at beginning of term	62,435 61
To Feb.	19	Received itemized in Ex. 101, p. 4	868 32
" April	5	" " " " 12	297 81
" "	21	" " " " 14	123 94
" Aug.	8	" " " " 16	9,304 65
Oct.	25	" " " " 18	654 60
Dec'r	28	" " " " 26	2,647 25
1884.		Collected on tax-roll of 1883, Ex. 211	106,308 03
To Feb.	11	Received itemized in Ex. 101, p. 26	716 25
March	19	" " " " 38	118 83
" April	19	" " " " 40	75 57
" May	6	" " " " 44	1,254 75
" "	16	" " " " "	4,531 96
" June	2	" " " " "	3,000 90
" June	11	" " " " "	1,007 53
" Aug.	1	" " " " 46	331 70
" "	7	" " " " "	1,676 08
" Sept.	30	" " " " "	524 20
" Oct.	28	" " " " "	1,286 12
" "	31	" " " " 48 (less $400 taxes)	25 00
" Dec.	31	" " " " "	2,288 81
" "	"	Collected on tax-roll of 1884, Ex. 216	101,340 03
" July	27	Received fines (Ex. 226) not entered on Ex. 101	125 00
		Total received during term	300,940 95

Disbursements.

1883.					
-- Jan.	10	Paid for school warrants, Ex. 101, p. 7			28 75
" "	20	" " " " " "			260 00
		Itemized in Ex. 101, pg. 9			13,103 60
" Feb.	6	" " " " 11			4,065 11
" March	8	" " " " 13			4,855 95
" April	17	" school warrants " " 15			8,478 35
" "	30	" treasurer's fees " " "			3,252 13
" "	"	" county warrants, Ex. 215, principal	21,477 31		
		Less amount on hand from last term, Ex. 88, p. 319; Ex. 101, p. 7	15,252 31		
				6,225 03	
" "	"	Paid on county warrants, Ex. 101, pp. 7, 15	4,474 49		
		Less am't on hand from last term, Ex. 89, p. 319, & Ex. 101, p. 7	3,261 64		
				1,212 85	
		Itemized in Ex. 101, page 17			3,348 00
" June	5	" " " " 19			3,873 61
" July	2	" " " " 21			2,353 44
Aug.	9	" " " " 23			3,039 24
Oct.	3	" " " " 25			1,122 75
"	29	Treasurer's fees, "			507 15
"	—	Itemized in " 27			2,703 52
Nov.	8	" " " 29			3,339 37
Dec.	4	" " " 31			2,448 73
"	22				
1884.					
Jan.	23	" " 33			3,025 94
Feb.	6	" " " 35			21,188 71
	28	" " " 37			2,930 03
March	22	" " " 39			2,573 42
April	17	" " " 41			2,269 87
"	30	" " " 43			1,816 08
"	"	" treasurer's fees, " "			3,966 48
"	"	" county warrants, principal ex			41,239 10
		" " " interest, Ex. 101, pp. 25 & 43			8,438 49
Oct.	1	" itemized in " p. 45			17,310 99
	31	School warrants, " " 49			3,465 33
	"	Road " " "			29 00
	"	" & bridge, " "	4,436 47		
		Less error in entering Ex. 227 on Ex. 101	50 00		
				4,386 47	
"	"	Treasurer's fees, Ex. 101, pg. 49			785 58
Dec.	31	Itemized in Ex. 101, p. 49, $65,525.01			69,072 40
	"	Treasurer's fees, " 51, 3,547.39			
		Total paid out during term			246,715 22

106*b* Term of 1883–1884.

Recapitulation.

Total receipts from all sources	300,940 95	
Total disbursements	246,715 22	
Amount that should have been on hand at end of term		54,225 73
Amount that was on hand, Ex. 101		48,866 77
Difference not accounted for		5,358 96

Items Making this Difference.

1883.			
	Collected on tax-roll 1883 more than accounted for, Ex. 211, Ex. 101, p. 26	1,941 24	
April 30.	Got credit for redemption of principal of county warrants in excess of am't actually redeemed, Ex. 213, p. 57, & Ex. 215	15 24	
1884.			
April 30.	Got credit for redemption of principal of county warrants in excess of am't actually redeemed, Ex. 213, p. 72, & Ex. —	89 41	
July 27.	Received from Thomas Cairn, not entered on books, Ex. 226	125 00	
Oct. 31.	Error in entering Ex. 227 on Ex. 101	50 00	
	Collected on tax-roll 1884 more than accounted for, Ex. 216, Ex. 101, pp. 48 & 50	3,138 07	
			5,358 96

[Endorsed:] No. 5475. The County of King, pl't'f, *vs.* George D. Hill *et al.*, def'ts. Account made by referee as part of his report. Filed May 15, 1888. W. E. Ledgerwood, clerk. A. R. Coleman, referee.

107 TERRITORY OF WASHINGTON, *Third Judicial District,* } *ss:*

In the District Court, Holding Terms at Seattle.

THE COUNTY OF KING *vs.* GEORGE D. HILL *et al.* } No. —. Motion to Set Aside Report of Referee and for a New Trial.

Come now the defendants, by their respective attorneys, and each and all move the court to set aside the report and findings of the referee herein upon the following grounds, viz:

1. Irregularity in the proceedings on the part of the plaintiff in this, that said plaintiff failed to set forth or specify in the pleadings the items of the account sued on, and failed and refused to furnish defendants the items of said account after a proper demand therefor before the trial.

2. Irregularity in the proceedings of said referee in admitting evidence of said account offered by said plaintiff, notwithstanding the failure of said plaintiff to either set forth in the pleadings the items of the account sued on or furnish said items to the defendants after a proper demand therefor before the trial and against defendants' objections, made at the time of the offer of said evidence.

108 3. Irregularity in the proceedings and abuse of discretion on the part of the referee in submitting in evidence, against defendants' objections, original books, papers, and documents which are public records required by law to be and remain in the custody of the auditor of King county.

4. Error in the assessment of the amount of the recovery, the amount as per said findings being too large.

5. Insufficiency of the evidence to justify the said findings and decision of said referee.

6. The said findings and decision of the referee are against law.

7. Error in law occurring at the trial and excepted to at the time by the defendants.

GREENE, McNAUGHT, HANFORD & McGRAW,
STRUVE, HAINES & McMICKEN,
Attorneys for George D. Hill, James McNaught, J. W. George, D. N. Hyde, and Joseph F. McNaught.
BURKE & HALLER,
Attorneys for Henry L. Yesler, John Leary, and E. P. Ferry.

We hereby admit that service of the foregoing motion has been legally made upon us, the attorneys for the plaintiff in the thereinentitled action, and that we have received a copy of said motion, at the county of King, W. T., this 2nd day of June, 1888.

J. R. LEWIS AND RONALD & PILES,
Attorneys for Plaintiff.

Indorsed: Filed this 2nd day of June, 1888. W. E. Ledgerwood, clerk, by H. T. Hannon, deputy.

109 In the District Court of the Third Judicial District of Washington.

WEDNESDAY, *September* 4, 1889.

THE COUNTY OF KING
vs.
GEORGE D. HILL, H. L. YESLER, JAMES McNAUGHT, JOHN LEARY, J. W. GEORGE, D. N. HYDE, ELISHA P. FERRY, and JOSEPH F. McNAUGHT.

No. 5475. Exceptions Overruled. Judgment.

Now, on this 4th day of September, 1889, this cause having been heretofore heard upon the evidence taken by A. R. Coleman, referee herein, and reported to the court, with his findings of fact and conclusions of law and the exceptions to said findings taken by the defendants herein and the argument of the attorneys for the respective parties, and taken under advisement by the court, and the court, being now sufficiently advised in the premises, overrules each and all of said exceptions and in all things affirms said findings and conclusions of the said referee and hereby adopts the same as the decision of the court in this cause.

And now this cause comes on for judgment upon the findings of fact and conclusions of law made by said referee and, by adoption, made the findings the decision of the court, and by reason of the premises and by virtue of the law it is considered and adjudged by the court that The County of King, plaintiff herein, do have and recover of and from the defendants, George D. Hill, H. L.
110 Yesler, James McNaught, John Leary, J. W. George, D. N. Hyde, Elisha P. Ferry, and Joseph F. McNaught, and each of them, the sum of five thousand four hundred and seventy-five ($5,475) dollars, with interest thereon at the rate of ten per cent. per annum from the — day of January, 1885, and the costs and disbursements of this cause, taxed and allowed at $—, and that execution issue therefor.

To which ruling and decision of the court defendants except, and their exception is allowed.

W. H. CALKINS, *Judge.*

Entered Journal "T," page 38.

111 & 112 STATE OF WASHINGTON, } ss:
County of King, }

I, J. H. McGraw, sheriff of said King county, do hereby certify that I received the annexed notice of writ of error on the 3rd day of March, 1890, and personally served the same on the same day on the law firm of Ronald and Piles therein named by delivering to and leaving with J. T. Ronald, senior member of said firm, personally, in said King county, a duly certified copy of said notice.

I do hereby further certify that on the said 3rd day of March I personally served said notice on Julius A. Stratton, prosecuting attorney for the county of King, by delivering to and leaving with the

said prosecuting attorney personally, in said King county, a duly certified copy of said notice.

Dated this 4th day of March, 1890.

J. H. McGRAW, *Sheriff*,
By J. H. WOOLERY, *Dep.*

Sheriff's fees:

Serving notice	$2 00	
Travel	60	
Return	50	
		1 10
		$3 10

113 STATE OF WASHINGTON, *County of King*, } ss:

In the Superior Court of the State of Washington for King County.

THE COUNTY OF KING, Plaintiff, *vs.* GEORGE D. HILL, HENRY L. YESLER, JAMES McNAUGHT, JOHN LEARY, J. W. GEORGE, D. N. HYDE, ELISHA P. FERRY, and JOSEPH F. McNAUGHT, Defendants.	No. 5475. Notice of Writ of Error.

To The County of King, plaintiff in the above-entitled cause, and to Julius A. Stratton, prosecuting attorney for the county of King, and Messrs. Ronald & Piles, attorneys for the above-named plaintiff:

Please take notice that the defendants in the above-entitled cause and each of them do hereby take a writ of error from the supreme court of the State of Washington to the superior court of the State of Washington for King county, the same being the successor to the district court of the third judicial district of the Territory of Washington, holding terms at the city of Seattle, in said county. Said writ of error is taken and will be prosecuted to correct the errors of the said district court manifest upon the face of the record herein and to reverse the final judgment of said district court in this cause.

114 The following is a particular description of the judgment sought to be reviewed by the supreme court upon said writ of error, viz: The judgment given and entered of record by the above-entitled district court on the 4th day of September, 1889, in favor of the above-named plaintiff and against the above-named defendants for the sum of $5,475 and interest and costs, which judgment is entered of record on page 38 of Journal "T," records of said district court, now in the custody of the county clerk of King county.

The following is a particular description of the errors assigned by the defendants and which they hereby allege are errors to their prejudice, committed by the aforesaid district court in the proceedings had in this action prior to the rendition of said judgment, which

errors manifestly appear and render the said judgment unlawful, viz:

First. The court erred in its order made September 28th, 1887, denying the defendants' motion to quash the summons and the return made thereon; which order is entered on page 419 of Journal N of said court.

Second. The court erred in its order made September 30th, 1887, denying the motion of the defendants to quash the summons and the return made thereon; which order is entered on page 434 of said Journal N.

Third. The court erred in its order made November 4, 1887, overruling the defendants' demurrer to the complaint; which order is entered on page 568 of said Journal N.

115 Fourth. The court erred in its order made December 15th, 1887, denying the defendants' motion to strike from the reply paragraphs sixteen, seventeen, and eighteen thereof; which order is entered on page 170 of Journal O of said court.

Fifth. The court erred in its order made December 16th, 1887, denying defendants' motion to require the plaintiff to make paragraphs sixteen, seventeen, and eighteen of its reply more definite and certain; which order is entered on pages 191 and 192 of said Journal O.

Sixth. The court erred in its order made December 16th, 1887, overruling the defendants' demurrer to the reply; which order is entered on page 193 of said Journal O.

Seventh. The court erred in its order made December 17th, 1887, denying the motion of defendants Yesler and Leary to make more definite and certain paragraphs sixteen and seventeen and eighteen of plaintiff's reply; which motion is entered on page 198 of said Journal O.

Eighth. The court erred in its order made December 17, 1887, overruling the demurrer of the defendants Yesler & Leary to the plaintiff's reply; which order is entered on pages 199 and 200 of said Journal O.

Ninth. The court erred in its order made September 4th, 1889, denying the motions of the defendants to set aside the report of the referee and to grant a new trial of this action, and the de-

116 fendants give notice that they rely upon the first, second, third, fourth, fifth, sixth, and seventh grounds for said motion specified and set forth therein.

STRUVE, HAINES & McMICKEN,
Attorneys for Defendants George D. Hill, James McNaught, J. W. George, and Joseph F. McNaught.

THOMAS BURKE,
Attorneys for Defendants Henry L. Yesler, John Leary, and Elisha P. Ferry.

Indorsed: Filed this 3rd day of March, 1890. M. M. Holmes, clerk.

117 In the Superior Court of the State of Washington for King County.

THE COUNTY OF KING, Plaintiff, *vs.* GEORGE D. HILL, HENRY L. YESLER, JAMES McNAUGHT, JOHN LEARY, J. W. GEORGE, D. N. HYDE, ELISHA P. FERRY, and JOSEPH F. McNAUGHT, Defendants.	No. 5475. Bond for Appeal.

Know all men by these presents that we, George D. Hill, Henry L. Yesler, James McNaught, John Leary, J. W. George, Elisha P. Ferry, and Joseph F. McNaught, as principals, and Fred. W. Sparling, as surety, are held and firmly bound unto The County of King in the penal sum of thirteen thousand dollars ($13,000); to the payment of which, well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly, severally, and firmly, by these presents.

Sealed with our seals this third day of March, 1890.

The condition of the foregoing obligation is such that—

Whereas, on the fourth day of September, 1889, the above-named plaintiff recovered judgment in the district court of the third judicial district of Washington Territory, holding terms at Seattle, in the county of King, against the above-bounden principals for the sum of five thousand four hundred and seventy-five dollars

118 ($5,475), together with interest and costs; and

Whereas said defendants have taken a writ of error from the supreme court of the State of Washington to the superior court of the State of Washington for King county, the same being the successor to the said district court, which said writ of error is taken to correct the errors of the said district court, manifest upon the face of the record in said cause, and to reverse the said judgment of the said district court; and

Whereas said defendants are desirous of a stay of proceedings in this cause on said judgment pending the hearing upon said writ of error by said superior court:

Now, therefore, if the said defendants shall pay to the said plaintiff all costs and damages that shall be adjudged against them on the hearing upon said writ of error and will satisfy and perform said judgment, in case it shall be affirmed, and any judgment or order which said supreme court may render or order to be rendered by the inferior court not exceeding the amount or value of the original judgment or order, then the foregoing obligation to be void; otherwise to remain in full force and effect.

GEO. D. HILL. [SEAL.]
HENRY L. YESLER. [SEAL.]
JAMES McNAUGHT, [SEAL.]
By J. F. McNAUGHT, [SEAL.]
His Att'y-in-Fact.
ELISHA P. FERRY, [SEAL.]
By THOMAS BURKE. [L. S.]
JOHN LEARY. [L. S.]
J. W. GEORGE. [SEAL.]
FRANK SPARKLING. [SEAL.]

Indorsed: Filed March 3rd, 1890. M. M. Holmes, clerk. Entered Journal 4, page 284.

119 In the Superior Court of King County, State of Washington.

THE COUNTY OF KING, Plaintiff,
vs.
GEORGE D. HILL, HENRY L. YESLER, JAMES MCNAUGHT, John Leary, J. W. George, D. N. Hyde, Elisha P. Ferry, Joseph F. McNaught, Defendants. } No. 5475.

STATE OF WASHINGTON, *County of King,* } *ss:*

I, M. M. Holmes, county clerk of King county and *ex officio* clerk of the superior court of said county, do hereby certify that the foregoing is a full, true, and correct transcript of so much of the record in the above-entitled cause as I am by statute required on appeal to transmit to the supreme court (not including testimony and exhibits).

In testimony whereof I have hereunto set my hand and the seal of said superior court this 10th day of October, 1890.

[Seal of Superior Court of King County, Washington.]

M. M. HOLMES, *Clerk.*

120 In the Probate Court of King County, Washington.

In the Matter of the Estate of DAVID N. HYDE, Deceased. No. 988.

Certificate to Transcript of Decree Admitting Will to Probate.

I, Richard Osborn, judge and *ex officio* clerk of the probate court of King county, State of Washington, do hereby certify the foregoing annexed document to be a true, correct, and complete copy of decree admitting will to probate in the above-entitled matter in said probate court, and that I have compared the same with the original document, of which the annexed purports to be a copy, and which original document is now on file in said probate court and in my exclusive possession, and that I am by law the custodian thereof, and that the said foregoing annexed document is a correct transcript of the original document and of the whole thereof.

In witness whereof I have hereunto set my hand and affixed the seal of said probate court this 15th day of November, 1890.

[SEAL.] RICHARD OSBORN,
Judge and ex Officio Clerk of the Probate Court of King County, Washington.

121 In the Probate Court of King County, State of Washington.

In the Matter of the Estate of DAVID N. HYDE, Deceased. No. 988.

Decree Admitting Will to Probate.

De Forest S. Hyde having, on the 11th day of February, 1890, submitted to and filed in this court a certain document in writing of a testamentary nature, purporting to be the last will and testament of David N. Hyde, deceased, and also his petition praying, among other things, for the admission to probate of the said document as and for the last will and testament of the said deceased—

And this court having, by order duly made on the 11th day of February, 1890, duly appointed the 11th day of February, 1890, at 11 o'clock a. m., for the proving of the said will and the hearing of the said petition:

Now, on this the 11th day of February, 1890, the hearing of the said petition comes on regularly before the court in open session; and it fully appearing to the satisfaction of the court that the said petition sets forth all the facts necessary to give this court jurisdiction over the estate of the said deceased and jurisdiction to admit to probate the last will and testament of the said deceased, and witnesses having been examined under oath and their testimony taken and reduced to writing in open court, to wit, the testimony of O. Jacobs and L. B. Andrews, subscribing witnesses to the said will, and the same having been filed, and the evidence being closed, and the matter having been duly and regularly and finally submitted to the court for consideration and decision, and all and singular the law and the premises being now by the court here fully

122 understood and duly considered, the court finds the facts applicable to this matter as follows: That the said David N. Hyde died testate on the 17th day of January, 1890, at said King county; that at the time of his death the said deceased was a resident of said King county and left estate in said King county subject to administration in the State of Washington.

That the said document purporting to be the last will and testament of the said David N. Hyde, deceased, was duly executed by him in his lifetime, to wit, on the sixth day of December, 1886, at said King county, in the presence of at least two competent witnesses, to wit, O. Jacobs and L. B. Andrews, the subscribing witnesses thereto, and also that the said deceased then and there, in the presence of the said witnesses, published the said document as and declared the same to the said witnesses to be his *his* last will and testament, and the said witnesses then and there attested the same at his request and in his presence and in the presence of each other.

That the said deceased at the time of executing the said last will and testament was over the age of majority, to wit, of the age of about seventy-one years, and was of sound and disposing mind and memory and not acting under duress, menace, fraud, nor any undue influence whatsoever, nor in any respect was he incompetent by last will to devise and bequeath his estate.

That James McNaught, De Forest Sheldon Hyde, and Florence

H. Chick are named in the said will as executors and executrix of said will without bond.

123 Now, therefore, by reason of the law and the facts aforesaid, it is considered, ordered, adjudged, and decreed by the court here that the jurisdiction to admit to probate the last will and testament of the said deceased appertains unto our said probate court; that the said document submitted for probate on the 11th day of February, 1890, is the last will and testament of the said David N. Hyde, deceased, and that the same was properly and legally executed and is entitled to be, and is hereby, admitted to probate.

That a certificate of probate thereof be granted, and that the said last will and testament, together with said certificate, be duly entered of record in the record of wills in this court, as provided by law.

Done in open court this 11th day of February, 1890.

RICHARD OSBORN,
Judge of the Probate Court of the said King County.

Recorded Journal M, page 168.
Filed November 18, 1890.

SOL. SMITH, *Clerk.*

124 In the Probate Court of King County, State of Washington.

In the Matter of the Estate of DAVID N. HYDE, Deceased. No. 988.

Oath of Executor.

COUNTY OF KING, *ss:*

De Forest S. Hyde, being duly sworn, on oath deposes and says: I am one of the persons who has been appointed executor of the last will and testament of David N. Hyde, deceased, by the above-entitled court, and I solemnly swear that I will perform, according to law, the duties of my trust as executor of the last will of deceased, so help me God.

DE FOREST S. HYDE.

Subscribed and sworn to before me this 11th day of February, 1890.

RICHARD OSBORN,
Judge and ex Officio Clerk of the Probate Court of King County, Washington.

124¼ In the Probate Court of King County, Washington.

In the Matter of the Estate of DAVID N. HYDE, Deceased. No. 988.

Certificate to Transcript of Oath of Executor.

I, Richard Osborn, judge and *ex officio* clerk of the probate court of King county, State of Washington, do hereby certify the foregoing annexed document to be a true, correct, and complete copy of

the oath of De Forest S. Hyde, one of the executors in the above-entitled matter in said probate court, and that I have compared the same with the original document, of which the annexed purports to be a copy, and which original dicument is now on file in the said probate court and in my exclusive possession, and that I am by law the custodian thereof, and that the said foregoing annexed document is a correct transcript of the said original document and of the whole thereof.

In witness whereof I have hereunto set my hand and affixed the seal of the said probate court this 17th day of December, 1890.

[SEAL.] RICHARD OSBORN,
Judge and ex Officio Clerk of the Probate Court of King County, Washington.

Filed December 19, 1890.

SOL. SMITH, *Clerk.*

124½ In the Probate Court of King County, State of Washington.

In the Matter of the Estate of GEORGE D. HILL, Deceased. No. 1195.

Decree Admitting Will Will *to Probate.*

David Kellogg having, on the 11th day of December, 1890, submitted to and filed in this court a certain documents in writing of a testamentary nature, purporting to be the last will and testament and the codicil thereto of George D. Hill, deceased, and also his petition, praying, among other things, for the admission to probate of the said documents as and for the last will and testament and codicil thereto of said deceased—

And this court having, by order duly made on the 11th day of December, 1890, appointed the 11th day of December, 1890, at 11 o'clock a. m., for the proving of the said will and codicil and the hearing of the said petition:

Now, on this the 11th day of December, 1890, the hearing of the said petition comes on regularly before the court in open session.

And it fully appearing to the satisfaction of the court that the said petition sets forth all the facts necessary to give this court jurisdiction over the estate of the said deceased and jurisdiction to admit to probate the last will and testament and codicil thereto of the said deceased, and witnesses having been examined under oath and their testimony taken and reduced to writing in open court, to wit, the testimony of T. Wright, Robert Allen, and S. C. Harris, subscribing witnesses to the said will and codicil, and the same having been filed and the evidence being closed, and the
124¾ matter having been duly and regularly and finally submitted to the court for consideration and decision, and all and singular the law and the premises being now by the court here fully understood and duly considered, the court finds the facts applicable to this matter to be as follows:

That the said George D. Hill died testate on the 4th day of December, 1890, at Skagit county, State of Washington, and at the

time of his death the said deceased was a resident of King county, State of Washington, and left estate in said King county subject to administration in Washington.

That the said document purporting to be the last will and testament and the codicil thereto of the said George D. Hill, deceased, *were* duly executed by him in his lifetime, to wit, on the 23d day of June, 1887, at King county, State of Washington, in the presence of at least three competent witnesses, to wit, T. Wright, Robert Allen, and S. C. Harris, the subscribing witnesses thereto, and also that the said deceased then and there, in the presence of the said witnesses, published the said document as and declared the same to the said witnesses to be his last will and testament and codicil thereto, and the said witnesses then and there attested the same at his request and in his presence and in the presence of each other.

That the said deceased at the time of executing the said last will and testament and codicil thereto was over the age of majority, to wit, of the age of about 47 years, and was of sound and disposing mind and memory and not acting under duress, menace, fraud, nor
125 any undue influence whatsoever, nor in any respect was he incompetent by last will to devise and bequeath his estate.

That E. P. Ferry, David Kellogg, and Eben Smith are named in the said will as executors thereof without bonds; that the said E. P. Ferry, David Kellogg, and Eben Smith are residents of Washington, above the age of twenty-one, and are suitable and competent persons to act as executors of the last will and testament and codicil thereto of the estate of the said deceased.

Now, therefore, by reason of the law and facts aforesaid, it is considered, ordered, adjudged, and decreed by the court here that the jurisdiction to admit to probate the last will and testament and codicil thereto of the said deceased appertains unto our said probate court; that the said document submitted for probate on the 11th day of December, 1890, is the last will and testament and codicil thereto of the said George D. Hill, deceased, and that the same was properly and legally executed and is entitled to be, and is hereby, admitted to probate.

That a certificate of probate thereof be granted, and that the said last will and testament and codicil thereto, together with said certificate, be duly entered of record in the record of wills in this court, as provided by law, and that the said E. P. Ferry, David Kellogg, and Eben Smith be, and they are hereby, appointed executors without bonds, and that they take and file in this court an oath in due form to the effect that they will faithfully perform the
126 duties of their trust as executors of said estate.

Done in open court this 11th day of December, 1890.

RICHARD OSBORN,
Judge of the Probate Court of King County, Wash.

126½ In the Probate Court of King County, State of Washington

In the Matter of the Estate of GEORGE D. HILL, Deceased. No. 1195.

Oath of Executor.

COUNTY OF KING, *ss*:

David Kellogg, being duly sworn, on oath deposes and says: I am one of the persons who has been appointed executor of the last will and testament, with codicil annexed, of said George D. Hill, deceased, by the above-entitled court, and I solemnly swear that I will perform, according to law, the duties of my trust as executor of the last will, with codicil annexed, of said George D. Hill, deceased, so help me God.

DAVID KELLOGG.

Subscribed and sworn to before me this 11th day of December, 1890.

RICHARD OSBORN,
Judge and ex Officio Clerk of the Probate Court of King County, Washington.

127 In the Probate Court of King County, State of Washington.

In the Matter of the Estate of GEORGE D. HILL, Deceased. No. 1195.

Letters Testamentary.

Whereas the last will of George D. Hill, deceased, was, on the 11th day of December, 1890, duly exhibited, proven, and recorded in our said probate court, a copy of which is hereto annexed;

And whereas it appears in and by the said will that David Kellogg is appointed as one of the executors thereon with Eben Smith and E. P. Ferry:

Now, therefore, know all men by these presents that we do hereby authorize the said David Kellogg to execute said will according to law.

Witness Richard Osborn, judge of our said probate court, and the seal of said court, hereto affixed, this 11th day of December, 1890.

[SEAL.]

RICHARD OSBORN,
Judge and ex Officio Clerk of the Probate Court of King County, Washington.

128 In the Probate Court of King County, State of Washington.

In the Matter of the Estate of GEORGE D. HILL, Deceased. No. 1195.

Oath of Executor.

COUNTY OF KING, *ss*:

Eben Smith, being duly sworn, on oath deposes and says: I am

one of the persons who has been appointed executor of the last will and testament, with codicil attached, of George D. Hill, deceased, by the above-entitled court, and I solemnly swear that I will perform according to law the duties of my trust as executor of the last will, with codicil attached, of said George D. Hill, deceased, so help me God.

EBEN SMITH.

Subscribed and sworn to before me this 11th day of December, 1890.

RICHARD OSBORN,
Judge and ex Officio Clerk of the Probate Court of King County, Washington.

129 In the Probate Court of King County, State of Washington.

In the Matter of the Estate of GEORGE D. HILL, Deceased. No. 1195.

Letters Testamentary.

Whereas the last will of George D. Hill, deceased, was on the 11th day of December, 1890, duly exhibited, proven, and recorded in our said probate court, a copy of which is hereto annexed;

And whereas it appears in and by the said will that Eben Smith is appointed one of the executors thereon with E. P. Ferry and David Kellogg:

Now, therefore, know all men by these presents that we do hereby authorize the said Eben Smith to execute said will according to law.

Witness Richard Osborn, judge of our said probate court, and the seal of said court hereto affixed, this 11th day of December, 1890.

[SEAL.] RICHARD OSBORN,
Judge and ex Officio Clerk of the Probate Court of King County, Washington.

130 In the Probate Court of King County, Washington.

In the Matter of the Estate of GEORGE D. HILL, Deceased. No. 1195.

Certificate to Transcript of Oaths, Letters, and Decree Admitting Will to Probate.

I, Richard Osborn, judge and *ex officio* clerk of the probate court of King county, State of Washington, do hereby certify the foregoing annexed documents to be a true, correct, and complete copy of the oaths of Eben Smith and David Kellogg, two of the executors of said estate, and the decree admitting will to probate and letters testamentary in the above-entitled matter in said probate court, and that I have compared the same with the original documents, of which the annexed purports to be a copy, and which original docu-

ments are now on file in said probate court and in my exclusive possession, and that I am by law the custodian thereof, and that the said foregoing annexed documents are a correct transcript of the said original documents and the whole thereof.

In witness whereof I have hereunto set my hand and affixed the seal of the said probate court this 18th day of December, 1890.

[SEAL.] RICHARD OSBORN,
Judge and ex Officio Clerk of the Probate Court of King County, Washington.

Filed December 24, 1890.

SOL. SMITH, *Clerk.*

131 In the Supreme Court of the State of Washington.

GEORGE D. HILL, H. L. YESLER, JAMES McNAUGHT, JOHN LEARY, J. W. GEORGE, D. N. HYDE, ELISHA P. FERRY, and JOSEPH F. McNAUGHT, Plaintiffs in Error,
vs.
THE COUNTY OF KING, Defendant in Error.
} No. 99. Motion and Notice.

Now comes the defendant in error, by its attorneys, Ronald & Piles and W. S. Bush, on this ninth day of December, 1890, and upon the papers now on file in this cause suggests the death of D. N. Hyde, one of the defendants below, and entitled as one of the plaintiffs in error in this cause, and moves the court that James McNaught, Florence Chick, and De Forest S. Hyde, executors of the estate of D. N. Hyde, deceased, be substituted on the record as such executors of the said D. N. Hyde, deceased.

W. S. BUSH & RONALD & PILES,
Attorneys for Defendants in Error.

Filed Dec. 9, 1890.
SOL. SMITH, *Clerk.*

132 GEORGE D. HILL *et al.*, Appellants,
—
THE COUNTY OF KING, Appellee.
} No. 99.

From the superior court of King county to the supreme court of the State of Washington.

133 *Additional Record. Index.*

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O.

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Precipe for transcript by pl'tiffs in error ..... Page 138

134 In the District Court of the Third Judicial District of Washington Territory, Holding Terms at Seattle for the Counties of King and Kitsap.

THE COUNTY OF KING, Plaintiff,
vs.
GEORGE D. HILL, H. L. YESLER, HILLORY BITLER, D. N. HYDE, *et al.*, Defendants. } No. 5474.

Comes now the defendants H. L. Yesler, Hillory Butler, and D. N. Hyde, defendants in the above-entitled action, by their attorneys, Burke & Haller, and move the court for a continuance of said cause until Wednesday, January 18th, 1888, on the ground that their attorneys, Messrs. Burke & Haller, are unable to be present in this court at this time.

This motion is based on the affidavit of Thomas Burke filed herein.

BURKE & HALLER,
Attorneys for Said Defendants.

135 In the District Court of the Third Judicial District of Washington Territory, Holding Terms at Seattle for the Counties of King and Kitsap.

THE COUNTY OF KING, Plaintiff,
vs.
GEORGE D. HILL, H. L. YESLER, JOHN Leary, Hillory Butler, D. N. Hyde, *et al.*, Defendants. } Cases No. 5474, 5475, and 5490.

STATE OF WASHINGTON, } *ss:*
County of King, }

Thomas Burke, being first duly sworn, on oath says that the firm of Burke & Haller are the attorneys for *for* the defendants H. L. Yesler, John Leary, Hillory Butler, and D. N. Hyde in the above-entitled action, and that he is the only member of said firm now in the city; that last night he was attacked with fever and chills, slept but very little, and had at times very high fever; that in consequence thereof he is unable to leave his house this forenoon and possibly not to-day; that he feels confident of being in a condition to be in attendance upon this court to-morrow.

THOMAS BURKE,

Subscribed and sworn to before me this 17th day of January, 1888.

R. J. TALLMAN,
Notary Public in and for the County of King and Washington Territory.

(Indorsed:) Filed Jan'y 17, 1888. A. R. Coleman, referee.

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136 In the District Court of the Third Judicial District of Washington Territory, Holding Terms at Seattle.

FRIDAY, *February 17th*, 1888.

THE COUNTY OF KING
vs.
GEORGE D. HILL *et al.* } No. 5475.

Upon motion of J. T. Ronald, attorney for the said plaintiff, The County of King, in this case, it appearing that certain records, to wit, the original assessment-rolls of said King county for the years 1883 and 1884, are desired or contain desired evidence for the plaintiff in said cause now being heard before a referee duly appointed, qualified, and sworn, and that the said rolls are in the custody and charge of the county auditor of said county, now, therefore, for good cause shown, it is ordered that said county auditor be directed and ordered to bring said rolls into court and produce the same for evidence before the said referee.

R. A. JONES, *Judge*.

Entered Journal "O," page 380.

137 In the District Court of the Third Judicial District of Washington Territory, Holding Terms at Seattle.

MONDAY, *February 20th*, 1888.

TERRITORY OF WASHINGTON, Plaintiff,
vs.
GEORGE D. HILL *et al.*, Defendants. } No. 5475.

In the above-entitled action, on motion of Messrs. Greene, Ha
ford, McNaught and McGraw, Struve, Haines and McMicken, Burk
& Haller, and Eben Smith, attorneys for respective defendants, it
ordered that leave and authority be, and hereby are, given to t
said attorneys for said defendants and to Messrs. D. T. Wheeler a
Edward Wheeler to examine each and all of the original asse
ment-rolls for King county, Washington Territory, for the ye
1881, 1882, 1883, 1884, 1885, and 1886, and to compare the sa
with the duplicate assessment-rolls for the same years, and to
amine any and all exhibits heretofore in said causes No. 5
5475, and 5490, or any of them offered by plaintiff and now in
tody of the hon. referee in said cause, and that such examina
and comparison may be made in the chambers assigned for
hearing of said causes before the said referee, and that Jame
Hannagan, bailiff, is hereby ordered to attend and be present a
during said examination and comparison and to produce said
and exhibits as called for by said defendants' attorneys or sa
T. Wheeler and Edward Wheeler or either of them fo
138 purposes of such examination and comparison.

R. A. JONES, *Ju*

Entered Journal "O," page 414.

In the Superior Court of King County, State of Washington.

COUNTY OF KING, Plaintiff, vs. GEORGE D. HILL *et al.*, Defendant. } Nos. 5474, 5475. Precipe for Transcript.

To M. M. Holmes, clerk:

You will please make transcript for the supreme court of the following papers, to wit: 1, pleadings; 2, referee's report and account; 3, motion to set aside report and for new trial; 4, judgment; 5, all the testimony; 6, all the exhibits; 7, notice of appeal; 8, notice of writ of error; 9, bond on appeal.

THOMAS BURKE,
Attorney for Defendants.

(Indorsed:) Filed Sept. 30, 1890. M. M. Holmes, clerk.

139 In the Superior Court of King County, State of Washington.

THE COUNTY OF KING, Plaintiff, vs. GEORGE D. HILL, HENRY L. YESLER, JAMES MCNAUGHT, John Leary, J. W. George, D. N. Hyde, Elisha P. Ferry, Joseph F. McNaught, Defendants. } No. 5475.

STATE OF WASHINGTON, *County of King*, } *ss:*

I, M. M. Holmes, county clerk of King county and *ex officio* clerk of the superior court of said county, do hereby certify that the foregoing is a full, true, and correct transcript of the affidavit of Thomas Burke, motion for continuance, order to the county auditor to produce assessment-rolls, order allowing defendants' attorneys to have access to the assessment-rolls, and precipe for transcript by plaintiffs in error.

In testimony whereof I have hereunto set my hand and [SEAL.] the seal of said superior court this 10th day of October, 1890.

M. M. HOLMES, *Clerk.*

(Endorsed:) Additional record. Filed October 20, 1890. Sol. Smith, clerk.

140 In the District Court of the Third Judicial District of the Territory of Washington, Holding Terms at Seattle.

THE COUNTY OF KING, Pla., vs. GEORGE D. HILL, H. L. YESLER, James McNaught, John Leary, J. W. George, D. N. Hyde, Elisha P. Ferry, and Joseph F. McNaught. } No. 5475. Judgment. Exception Overruled.

Now, on this 4th day of September, 1889, this cause having been

heretofore heard upon the evidence taken by A. R. Coleman, referee herein, and reported to the court with his findings of fact and conclusions of law and the exceptions to said findings taken by the defendants herein and the argument of the attorneys for the respective parties and taken under advisement by the court, and the court, being now sufficiently advised in the premises, overrules each and all of said exceptions, and in all things affirms said findings and conclusions of the said referee, and hereby adopts the same as the decision of the court in this cause.

And now this cause comes on for judgment upon the findings of fact and conclusions of law made by said referee and by adoption made the findings and the decision of the court, and by reason of the premises and by virtue of the law it is considered and adjudged by the court that The County of King, the plaintiff herein, do have and recover of and from the defendants, George D. Hill, H. L. Yesler, James McNaught, John Leary, J. W. George, D. N. Hyde, Elisha P. Ferry, and Joseph F. McNaught, and each of them the
141 sum of five thousand four hundred and seventy-five ($5,475) dollars, with interest thereon at the rate of ten per cent. per annum from the — day of January, 1885, and the costs and disbursements of this cause, taxed and allowed at $——, and that execution issue therefor.

To which ruling and decision of the court defendants except, and their exception is allowed.

W. H. CALKINS, *Judge.*

(Journal "T," page 38.)

142 STATE OF WASHINGTON, } ss:
County of King, }

In the Superior Court of the State of Washington for the County of King.

THE COUNTY OF KING, Plaintiff, *vs.* GEORGE D. HILL, HENRY L. YESLER, JAMES McNaught, John Leary, J. W. George, D. N. Hyde, Elisha P. Ferry, and Joseph F. McNaught, Defendants.	No. 5475.	Notice of Writ of Error.

To The County of King, plaintiff in the above-entitled cause, and to Julius A. Stratton, prosecuting attorney for the county of King, and Messrs. Ronald & Piles, attorneys for the above-named plaintiff:

Please take notice that the defendants in the above-entitled cause and each of them do hereby take a writ of error from the supreme court of the State of Washington to the superior court of the State of Washington for King county, the same being the successor to the district court of the third judicial district of the Territory of Washington, holding terms at the city of Seattle, in said county. Said writ of error is taken and will be prosecuted to correct the errors of

the said district court manifest upon the face of the records herein and to reverse the final judgment of said district court in this cause.

The following is a particular description of the judgment
143 sought to be reviewed by the supreme court upon said writ of error, viz: The judgment given and entered of record by the above-entitled district court on the 4th day of September, 1889, in favor of the above-named plaintiff and against the above-named defendants for the sum of $5,475.00 and interest and costs, which judgment is entered of record on page 38 of Journal "T," records of said district court, now in the custody of the county clerk of King county.

The following is a particular description of the errors assigned by the defendants, and which they hereby allege are errors to their prejudice, committed by the aforesaid district court in the proceedings had in this action prior to the rendition of said judgment, which errors manifestly appear and render said judgment unlawful, viz:

First. The court erred in its order, made September 28th, 1887, denying the defendants' motion to quash the summons and the return made thereon, which order is entered on page 419 of Journal N of said court.

Second. The court erred in its order, made September 30th, 1887, denying the motion of the defendants to quash the summons and the return made thereon, which order is entered on page 434 of said Journal N.

Third. The court erred in its order of November 4th, 1887, overruling the defendants' demurrer to the complaint, which order is entered on page 568 of said Journal N.

Fourth. The court erred in its order, made December 15th, 1887, denying the defendants' motion to strike from the reply para-
144 graphs sixteen, seventeen, and eighteen thereof, which order is entered on pages 170 of Journal O of said court.

Fifth. The court erred in its order, made December 16th, 1887, denying the defendants' motion to require the plaintiff to make paragraphs sixteen, seventeen, and eighteen of its reply more definite and certain, which order is entered on pages 191 and 192 of said Journal O.

Ssixth. The court erred in its order, made December 16th, 1887, overruling the defendants' demurrer to the reply, which order is entered on page 193 of said Journal O.

Seventh. The court erred in its order, made December 17th, 1887, denying the motion of defendant- Yesler and Leary to make more definite and certain paragraphs sixteen, seventeen, and eighteen of plaintiff's reply, which motion is entered on page 198 of said Journal O.

Eighth. The court erred in its order, made December 17, 1887, overruling the demurrer of the defendants Yesler and Leary to the plaintiff's reply, which order is entered on page- 199 and 200 of said Journal O.

Ninth. The court erred in its order, made September 4th, 1889, denying the motion of the defendants to set aside the report of the

referee and to grant a new trial of this action; and the defendants give notice that they rely upon the first, second, third, fourth, fifth, sixth, and seventh grounds for said motion specified and set forth therein.

STRUVE, HAINES & McMICKEN,
Attorneys for Defendants George D. Hill,
145 *James McNaught, J. W. George, and*
Joseph F. McNaught.

THOMAS BURKE,
Attorney for Defendants Henry L. Yesler,
John Leary, & Elisha P. Ferry.

(Endorsed:) Filed this 3d day of March, 1890. M. M. Holmes, clerk.

STATE OF WASHINGTON, } ss:
County of King, }

I, J. H. McGraw, sheriff of said King county, do hereby certify that I received the annexed notice of writ of error on the 3d day of March, 1890, and personally served the same on the same day on the law firm of Ronald & Piles, therein named, by delivering to and leaving with J. T. Ronald, senior member of said firm, personally, in said King county, a duly certified copy of said notice. I do hereby further certify that on the said 3d day of March I personally served said notice on Julius A. Stratton, prosecuting attorney for the county of King, by delivering to and leaving with the said prosecuting attorney personally, in said King county, a duly certified copy of said notice.

Dated this 4th day of March, 1890.

J. H. McGRAW, *Sheriff,*
By J. H. WOOLERY, *Dep.*

Sheriff's fees:

Serving notice----------	$2 00
Travel, 60; return, 50----	1 10
	$3 10

146 STATE OF WASHINGTON, } ss:
County of King, }

I, M. M. Holmes, clerk of the superior court of King county, State of Washington, do hereby certify that the foregoing is a full, true, and correct transcript of so much of the record in the above-entitled cause as I am by statute required for defendants in error, on motion to dismiss writ of error, to transmit to the supreme court.

Seal Sup. Court. In testimony whereof I have hereunto set my hand and affixed the seal of said superior court this 3d day of October, 1890.

M. M. HOLMES, *Clerk.*

(Endorsed:) Filed October 7, 1890. Sol. Smith, clerk.

147 In the Supreme Court of the State of Washington, October Session, 1890.

GEORGE D. HILL, H. L. YESLER, JAMES McNaught, John Leary, J. W. George, D. N. Hyde, Elisha P. Ferry, and Joseph F. McNaught, Plaintiffs in Error, *vs.* THE COUNTY OF KING, Defendant in Error.	No. 5475.	Motion.

Comes now the defendant in error, by its attorneys, Ronald & Piles and W. S. Bush, and moves the court that the writ of error in this cause be dismissed for the reason that the said plaintiffs in error have failed and neglected to file or to cause to be filed in this court a transcript of said cause within the time prescribed by law and the rules of this court or at all.

RONALD & PILES AND
W. S. BUSH,
Attorneys for Defendant in Error.

Received true copy of the foregoing motion, at Seattle, this 2d day of October, 1890, service of which is hereby admitted.

J. C. HAINES, STEDMAN,
Attorneys for Plaintiffs in Error.

THOMAS BURKE,
Attorney for Henry L. Yesler and John Leary & Elisha P. Ferry.

Filed October 7, 1890.
SOL. SMITH, *Clerk.*

148 In the Supreme Court of the State of Washington, October Session, 1890.

GEORGE D. HILL, HENRY L. YESLER, JAMES McNaught, John Leary, J. W. George, D. N. Hyde, Elisha P. Terry, and Joseph McNaught *vs.* THE COUNTY OF KING, Defendant in Error.	99. No. 5475.	Notice.

To the above-named plaintiffs in error and to Col. J. C. Haines and Hon. Thomas Burke, their attorneys:

You and each of you will please take notice that the undersigned, attorneys for the defendant in error, will, at the hour of 11 o'clock a. m. on the 13th day of October, 1890, or as soon thereafter as counsel can be heard, call up for hearing and argument their motion filed in this cause to dismiss your so-called writ of error on the ground that you have failed and neglected to file or cause to be certified and filed with the supreme court within the time prescribed by law or the rules of said court or at all the transcript of said cause.

RONALD & PILES AND
W. S. BUSH,
Attorneys for Defendant in Error.

Received true copy of the foregoing notice at Seattle this 2d day of October, 1890, service of which is hereby admitted.

J. C. HAINES, STEDMAN,
Attorneys for Plaintiff- in Error.

THOMAS BURKE,
Attorney for Henry L. Yesler, John Leary, Elisha P. Ferry.

Filed October 7, 1890.
SOL. SMITH, *Clerk.*

149 In the Supreme Court of the State of Washington.

GEORGE D. HILL *et al.*, Plaintiffs in Error,
vs.
THE COUNTY OF KING, Defendant in Error. } No. 99. Affidavit.

STATE OF WASHINGTON, }
County of King, } *ss:*

I, J. T. Ronald, do solemnly swear that I am one of the attorneys for the defendant in error in this cause; that on September 16th, 1890, in company with W. S. Bush, another of the attorneys for the defendant in error, I visited the office of the clerk of the superior court of this county for the purpose of examining the transcript in this cause; that upon arriving at said office I found no transcript had been prepared, nor had any precipe for the filing or for the preparation of said transcript been filed with said clerk; that I then asked for the files of said cause, whereupon the clerk of the court delivered to me the files in said cause; that, in connection with the said W. S. Bush, I then and there examined the pleadings in said cause and the motion in said cause as the same were printed and set forth in their brief which had been upon that same day served upon me, and on said examination I also examined all the journal entries in this cause and took copies of the same so far as necessary for the purpose of enabling me to make up my answering brief. At said examination I stated to said clerk that I was astonished that he had not as yet prepared the transcript in said cause,
150 because I understood from the rules of the supreme court that the transcript should have been prepared before the filing by the plaintiffs in error of their first brief; whereupon I was by the said clerk then informed that the attorneys for the plaintiffs in error had not up to said date filed with him any precipe for the preparation of said transcript.

J. T. RONALD.

Subscribed and sworn to before me this 23d day of Oct., 1890.
J. C. HAINES,
Notary Public in and for the State of Washington, Residing at Seattle.

Received true copy of the foregoing affidavit at Seattle this 23d day of October, 1890, service of which is hereby admitted.

_____,
Attorneys for Plaintiffs in Error.

151 In the Supreme Court of the State of Washington.

GEORGE D. HILL *et al.*, Plaintiffs in Error,
vs.
THE COUNTY OF KING, Defendant in Error. } No. 99. Affidavit.

TERRITORY OF WASHINGTON,
County of King, } ss:

Thomas Burke, being duly sworn, deposes and says that he is attorney for certain of the plaintiffs in error in the above-entitled cause, and that at no time was any demand or request made of him for any of the fees of the clerk of the superior court of the State of Washington for the county of King for the making or preparing of the transcript in this cause or at any time was the payment of such fees made, to his knowledge, a condition precedent to sending the said transcript up; and said affiant further says that if any such demand had been made upon him he would have at once paid such fees and would have secured the immediate filing of such transcript.

THOMAS BURKE.

Subscribed and sworn to before me this 23d day of October, 1890.
J. E. LILLY,
Notary Public.

Filed Oct. 27, 1890.
SOL. SMITH, *Clerk.*

152 In the Supreme Court of the State of Washington.

GEORGE D. HILL *et al.*, Plaintiffs in Error,
vs.
THE COUNTY OF KING, Defendant in Error. } No. 99. Affidavit.

STATE OF WASHINGTON,
County of King, } ss:

I, W. S. Bush, being duly sworn, depose and say that I am one of the attorneys in the above-entitled cause; that upon service upon me of a copy of the brief of plaintiffs in error, on the 16th day of September, 1890, I called upon J. T. Ronald to examine the writ of error in this case. We immediately went to the office of the clerk of the superior court of King county, asked for the files in the cause, which were handed us, and proceeded to examine them and the journal entries relating to them so far as they are referred to in the motion to set aside the report of the referee and in the notice of writ of error; that the clerk remarked to us that the transcript was not prepared because no precipe had *had* been filed directing what the record should contain; that at that time one of the clerks of either Judge Burke or J. C. Haines came in inquiring for a reply in case No. 5475; that this was found in the papers and handed him, and the clerk of the court called his attention to the fact that no precipe for record had been filed and it was necessary that it should be filed

at once for the purpose of making the proper transcript. Affiant further says that answering brief of defendant in error was filed with the clerk of the superior court September 29th, 1890; that in
153 that brief was printed two journal entries of the court below in relation to the use of original assessment-rolls to meet one of the grounds assigned for a new trial; that affiant, after the filing of said brief, frequently visited the office of the clerk of the superior court to see what was included in the transcript; that on the 9th day of October, 1890, he *he* found that these journal entries were omitted from the transcript prepared in obedience to the precipe for record of plaintiffs in error, and thereupon filed a precipe for additional record containing these journal entries among other things, and that the same was prepared on the 10th day of October, 1890, and was ordered to be sent at once to the clerk of this court; that he was informed on the 9th day of October, 1890, by M. M. Holmes, Esq., clerk of the superior court, that the attorneys for plaintiffs in error had notified him to send up the record so far as prepared without the evidence or the exhibits, and that they would suggest in the court above a diminution of record and ask for time to file it. Affiant further says that he was informed on the 10th day of October, 1890, by M. M. Holmes, clerk of the superior court of King county, that the record as then prepared was ready to be forwarded as soon as a check in payment for the fees for preparing the same was given him, and that he was expecting that check in time that day to forward the record. Affiant further says that at the time he ordered the additional record containing the precipe for record filed by plaintiffs in error September 30, 1890, said clerk remarked
154 that it would not be his fault if the record was not forwarded, and he wished that fact to come before the supreme court, and affiant replied that the precipe for record filed September 30th would show that the laches was that of the attorneys of the plaintiffs in error and not of the clerk. Affiant further says that on the — day of ——, 1890, he served upon attorneys of plaintiffs in error copies of the briefs upon the motion to dismiss for failure to file transcript, as will appear by the acknowledgement of service upon said brief filed in this cause.

W. S. BUSH.

Subscribed and sworn to before me this 23d day of Oct., 1890.

S. H. PILES,

[SEAL.] *Notary Public in and for the State of Washington, Residing at Seattle.*

155 In the Supreme Court of the State of Washington.

GEORGE D. HILL *et al.*, Plaintiffs in Error,
vs.
THE COUNTY OF KING, Defendant in Error. } No. 99. Affidavit.

STATE OF WASHINGTON, }
County of King, } *ss:*

Thomas Burke and J. C. Haines, being first duly sworn, each for

himself deposes and says that he is attorney for certain of the plaintiffs in error, and that said affiants are together attorneys for all of said plaintiffs in error; that during the summer of 1890 a stipulation and agreement was entered into between these affiants and the attorneys for the defendant in error in regard to the time in which briefs of the plaintiffs in error should be filed; that owing to the fact that a portion of the record in said cause had been mislaid by the clerk of the superior court and could not be found it was impossible for said affiants to incorporate in their briefs all the pleadings of said cause, and that consequently it was necessary for said affiants to secure an extension of time in which to file said briefs, and said affiant did secure such extension of time from the attorneys for said defendant in error, and as soon as said pleadings could be had and copies thereof incorporated in their said briefs caused the same to be presented, served, and filed.

Said affiants further say that said briefs were filed within
156 the time agreed upon between said affiants and said attorneys for said defendants in error, and that it was at all times perfectly understood and agreed between the said affiants and the said attorneys for the defendant in error that if said briefs were filed in time to allow the defendant in error to file its brief before the beginning of the October session that the filing of the briefs of the plaintiffs in error would be considered in due time. Said affiants further says that said briefs of said plaintiffs in error were so filed.

And these affiants further say that they believed and understood that under rule VI of this court the transcript need not be filed until after said briefs were filed, and that accordingly they did not require the same to be filed until after the filing of said briefs.

Said affiants further say it is their belief and they allege the fact to be that said plaintiff in error have good ground upon the record of this case for reversal of the judgment of the district court of the third judicial district of Washington Territory in this cause.

THOMAS BURKE.
J. C. HAINES.

Subscribed and sworn to before me this 20th day of October, 1890.

J. E. LILLY,
Notary Public.

Filed this 21st day of October, 1890.
SOL. SMITH, *Clerk.*

157 In the Supreme Court of the State of Washington.

TUESDAY, *October 21st*, 1890.

GEORGE D. HILL *et al.*, Appellants,
vs.
THE COUNTY OF KING, Appellee. } 99.

And now, this cause coming on for hearing, upon the motion of appellants to show that the failure to file a transcript in this court

is the fault of the clerk of the superior court of King county, ordered that said motion be, and hereby is, granted, and that said appellant have until the coming in of court on Monday morning, October 27th, 1890, to show said fault.

Entered, page 170, Record, vol. 1, of supreme court of State of Washington.

158 In the Supreme Court of the State of Washington.

GEORGE D. HILL *et al.*, Plaintiff- in Error,
vs.
THE COUNTY OF KING, Defendant in Error. } No. 99.

STATE OF WASHINGTON, *County of King*, } *ss*:

Thomas Burke, being first duly sworn, on oath says that he is attorney for certain of the plaintiffs in error in the above-entitled cause; that on or about the 30th day of September, 1890, he caused a precipe to be filed with the clerk of the superior court of King county for a transcript of the record for the supreme court in the above-entitled cause; that said transcript wa- duly prepared by the clerk of the superior court; that affiant supposed that said transcript had been transmitted by the clerk of said superior court to the supreme court prior to the commencement of the October term of said supreme court; that the first intimation or knowledge affiant had that said transcript had not been transmitted to the supreme court was by a telegram received from J. C. Haines on the 21st day of October, 1890; that under rule VI of the supreme court the transcript, as affiant understands it, is not to be sent to the supreme court until the briefs of the parties have been filed; that, as affiant is informed and believes, the transcript in said cause was completed in ample time to be transmitted to the supreme court before the commencement of the October term thereof; and affiant fur-

159 ther says that he has been engaged in the practice of law in the county of King for upwards of fifteen years; that in the course of his practice, where he has taken appeals or sued out writs of error in the supreme court, the uniform practice in his cases has been that upon the preparation and completion of the transcript the clerk of the court, without further question to the attorneys and without further action on the part of the attorneys, transmitted the transcript of the record of the lower court to the supreme court; that in no case heretofore has the question of the payment of fees been made a condition precedent for the transmission of the transcript to the supreme court, the filing of the precipe by affiant being regarded as sufficient security and assurance of the payment of the fees.

THOMAS BURKE.

Subscribed and sworn to before me this 22d day of October, 1890.

J. C. HAINES,
Notary Public.

Filed Oct. 27, 1890.
SOL. SMITH, *Clerk.*

160 In the Supreme Court of the State of Washington.

GEORGE D. HILL *et. al.*, Plaintiffs in Error,
vs.
THE COUNTY OF KING, Defendant in Error. } No. 99.

M. M. Holmes, being duly sworn, deposes and says that he is county clerk of said county of King, and has been such since Nov. 18, 1889; that heretofore, to wit, before the 10th day of October, 1890, he finished the transcript on appeal in the above-entitled cause, and that said transcript was prepared to be transmitted in due course to the supreme court of this State in time for the October session thereof; that by an oversight said transcript remained in the office of this affiant and was not transmitted to the supreme court until this day; that according to the best of this affiant's knowledge the failure to transmit the said transcript to the supreme court prior to this time or prior to the convening of this session of the supreme court was not due to any fault or neglect of J. C. Haines or Thomas Burke, counsel for appellants in this case.

M. M. HOLMES.

Subscribed and sworn to before me this 22 day of Oct., 1890.

J. C. HAINES,
Notary Public.

Filed Oct. 27, 1890.

SOL. SMITH, *Clerk.*

161 In the Supreme Court of the State of Washington.

GEORGE D. HILL *et al.*, Plaintiffs in Error,
vs.
THE COUNTY OF KING, Defendant in Error. } No. 99. Affidavit.

STATE OF WASHINGTON,
County of King, } *ss:*

I, M. M. Holmes, being first duly sworn, do declare that I am county clerk and *ex officio* clerk of the superior court of said county, and have been such clerk since the 18th day of November, 1889; that before the filing of a precipe for a transcript in said cause on the 30th day of September, 1890, I had commenced the preparation of a transcript in said cause; that said transcript was completed on or before the 10th day of October, 1890, except as to the testimony and exhibits, which were too voluminous to be written before the meeting of the present term of the supreme court; that on or about October 10th, 1890, I called the attention of one or more of the clerks of Thomas Burke, Esq., that the transcript was ready and would be forwarded upon the payment of the fees prescribed by law for the same; that said clerk promised to call the attention of Col. Haines and Judge Burke, attorneys for the appellant, to the same, but I am informed that by an oversight said clerk failed to do so, in consequence of which said transcript remained in my office until

October 22d, 1890, when the fees were arranged for and the transcript was forwarded by express to the clerk of the supreme court.

M. M. HOLMES.

Subscribed and sworn to before me this 23d day of October, 1890.

[SEAL.] RICHARD OSBORNE,
Notary Public.

In the Supreme Court of the State of Washington.

GEORGE D. HILL *et al.*, Plaintiffs in Error,
vs.
THE COUNTY OF KING, Defendant in Error. } No. 99. Affidavit.

STATE OF WASHINGTON, } ss:
County of King, }

J. C. Haines, being duly sworn, on oath deposes and says that he is attorney for certain of the plaintiffs in error in the above-entitled cause; that at a date not later than the 3d day of October, 1890, he called at the office of the clerk of the superior court of the State of Washington for the county of King for the purpose of ascertaining whether the transcript in this cause had been transmitted to the supreme court; that he there found said transcript complete, with the exception of the original testimony, although said transcript had not been certified by said clerk; that the clerk inquired of this affiant whether he desired the transcript of the original testimony, and this affiant replied to said clerk that he did not; that under the statute in force at the time of sueing out of the writ of error in said cause the original testimony and exhibits should be transmitted to the supreme court; that the clerk thereupon stated to this affiant that the said exhibits were very bulky, and some of them public records, and that he did not like to send them to the supreme court without a special order to that effect. Then this affiant in-

164 structed the clerk to frame his certificate so as to show no part of said original testimony or exhibits had been sent up with the said transcript, and then and there instructed said clerk to send said transcript to this court at once, to which said clerk assented; and this affiant supposed and believed and in good faith understood that the said clerk would immediately upon the making of said certificate transmit said transcript to this court, and, relying upon that fact and upon the further fact that the completing of said transcript and filing the same in this court had been taken especial charge of by the Hon. Thomas Burke, one of the attorneys in this cause, as appears by the precipe signed by him and filed in said superior court on the 30th day of September, 1890, made no further inquiry or investigation concerning the said transcript or its filing in this court, but until the 21st day of October, 1890, fully believed and supposed that the said transcript had been filed in due time.

And affiant further says that he has been engaged in the practice of law in the city of Seattle, in the county of King, in the Territory

and State of Washington, for more than ten years last past, and has a somewhat extensive practice in the courts of record in the Territory and State of Washington during that time; that it has never occurred in the practice of this affiant that the clerk of any court of record from which an appeal had been taken to the supreme court that the clerk has demanded the payment of his fees as a condition precedent to the sending up of the transcript to the supreme
165 court, but, on the contrary, whenever a precipe has been filed by this affiant the said clerk has treated said precipe as security for his fees and rendered his account for the same in due course of business, without making or urging any claim to retaining said transcript or refusing to transmit it to the supreme court until after his fees were paid.

And this affiant further says that at no time was any demand made upon him for the fees for the preparation of said transcript or for any fees in this cause.

And this affiant further says that it is and has always been since the suing out of the writ of error in this cause the intention of this affiant and of the plaintiffs in error to prosecute the appeal to this court; that this cause would have been ready for hearing at the May session of this court had not the attorneys for the defendant in error requested of the attorneys for the plaintiffs in error permission to file a supplemental brief in case No. 8 in the district court, and requested, further, that this case, together with case No. 98, should not be heard until the said cause No. 8 was heard, and that all three of the cases—that is, numbers 8, 98, and 99—be heard together; that the attorneys for the plaintiffs in error consented to said arrangement, and it was made the condition of a stipulation for a continuance that the briefs need not be filed until within a time sufficient to allow the defendant in error to file *their* answering brief before the beginning of the October session.

166 And said affiant further says that at the time said arrangement was made the plaintiffs in error in this cause were not in default on account of failure to file briefs or the transcript, as the time for filing the same had not expired, but that the written stipulation which has been exhibited in this court in reference to the filing of said briefs was made some time after the arrangement aforesaid was entered into orally.

J. C. HAINES.

Subscribed and sworn to before me this 23 day of October, 1890.

J. E. LILLY,
Notary Public.

Filed this 27th day of October, 1890.

SOL. SMITH, *Clerk.*

167 In the Supreme Court of the State of Washington.

MONDAY, *October* 27*th*, 1890.

GEORGE D. HILL *et al.*, Appellants,
vs.
THE COUNTY OF KING, Appellee. } 99.

And now this cause, coming on for hearing upon the rule to show cause why said case should not be dismissed, was argued and submitted by counsel and taken by the court under advisement.

Entered page 179, Record, vol. I, of supreme court of the State of Washington.

168 In the Supreme Court of the State of Washington.

WEDNESDAY, *October* 29*th*, 1890.

GEORGE D. HILL *et al.*, Plaintiff- in Error,
vs.
THE COUNTY OF KING, Defendant in Error. } No. 99.

This cause having been heretofore submitted upon motion to dismiss, and the court, having fully considered the same, and being fully advised in the premises, doth deny the same.

Entered page 184, Record, vol. I, supreme court, State of Washington.

169 In the Supreme Court of the State of Washington.

GEORGE D. HILL, H. L. YESLER, JAMES McNAUGHT, JOHN LEARY, J. W. GEORGE, D. N. HYDE, ELISHA P. FERRY, and JOSEPH F. McNAUGHT, Plaintiffs in Error,
v.
THE COUNTY OF KING, Defendant in Error. } No. 99. Affidavit.

STATE OF WASHINGTON, } *ss:*
County of King, }

J. F. McNaught, being duly sworn, says that he has been a resident of Seattle, Washington, for upwards of twelve years last past, and does now reside in said city; that during the lifetime of D. N. Hyde, one of the plaintiffs in error in the above-entitled action, while said Hyde was a resident of Seattle, he was personally acquainted with him; that said D. N. Hyde died at the city of Seattle, King county, State of Washington, on the 17th day of January, 1890.

J. F. McNAUGHT.

Subscribed and sworn to before me this 7th day of November, 1890.

J. G. NIGGLE,
Notary Public in and for the State of Washington,
Residing at Seattle.

Service of a copy of within affidavit is hereby admitted. Dated Seattle, Wash., Nov. 7, 1890.

R. & P. & W. S. BUSH,
Attorney for Defendant in Error.

Filed Nov. 10, A. D. 1890.

170 In the Supreme Court of the State of Washington.

THURSDAY, *November 20th*, 1890.

GEORGE D. HILL *et al.*, Plaintiff- in Error,
vs.
THE COUNTY OF KING, Defendant in Error. } No. 99.

This cause, coming on for hearing, by consent of the parties in open court, was argued and is to be considered in connection with cause No. 98.

Entered page 203, Record, vol. I, of supreme court.

171 In the Supreme Court of the State of Washington.

WEDNESDAY, *December 3d*, 1890.

GEORGE D. HILL *et al.*, Plaintiffs in Error,
vs.
THE COUNTY OF KING, Defendant in Error. } No. 99.

This cause having heretofore been submitted to the court upon a motion to dismiss said action and —, being fully advised in the premises, doth deny the same.

Entered page 211, Record, vol. I, of supreme court.

172 In the Supreme Court of the State of Washington.

GEORGE D. HILL, JAMES McNAUGHT, HENRY L. YESLER, JOHN LEARY, J. W. GEORGE, D. N. HYDE, E. P. FERRY, J. F. McNAUGHT, Plaintiffs in Error,
vs.
THE COUNTY OF KING, Defendant in Error. } No. 99. Affidavit of J. T. Ronald.

STATE OF WASHINGTON, *County of King*, } *ss:*

J. T. Ronald, being first duly sworn, upon his oath says that George D. Hill, one of the plaintiffs in error in the above-entitled cause, since the filing of said cause in this court, and on, to wit, the 4th day of December, 1890, met his death by drowning in the waters of Puget sound, and is now dead.

J. T. RONALD.

Subscribed and sworn to before me this 6th day of December, 1890.

LEE DE VRIES,
Notary Public in and for the State of Washington, Residing at Seattle.

Service of a copy of within affidavit is hereby admitted this 6th day of December, 1890.

J. C. HAINES,
Att'y for All Pl'ff- in Error.

Filed Dec. 9, 1890.
SOL. SMITH, *Clerk.*

173 In the Supreme Court of the State of Washington.

GEORGE D. HILL, H. L. YESLER, JAMES McNAUGHT, JOHN LEARY, J. W. GEORGE, D. N. HYDE, ELISHA P. FERRY, and JOSEPH F. McNAUGHT, Plaintiffs in Error,
vs.
THE COUNTY OF KING, Defendant in Error.
} No. 99. Motion and Notice.

To the Hon. J. C. Haines, attorney for the above-named plaintiffs in error James McNaught, J. W. George, and Joseph F. McNaught, and to the Hon. Thomas Burke, attorney for the above-named plaintiffs in error H. L. Yesler, John Leary, and Elisha P. Ferry:

You and each of you will please take notice that the undersigned, attorneys for defendant in error, The County of King, will, on Tuesday, the 9th day of December, 1890, at the hour of ten o'clock a. m., or as soon thereafter as counsel can be heard, suggest to the supreme court of the State of Washington, then in session, and notify the said court of the death of George D. Hill, one of the plaintiffs in error in this cause, and ask and move said court for the substitution in place of the said plaintiff in error George D. Hill of his executors or administrators.

This motion and notice are based upon the affidavit of J. T. Ronald on file in this cause.

W. S. BUSH AND RONALD & PILES,
Attorneys for Defendant in Error.

Service of a copy of within motion and notice is hereby admitted this 6th day of December, 1890.

J. C. HAINES,
Att'y for All Plaintiffs in Error.

Filed Dec. 9, 1890.
SOL. SMITH, *Clerk.*

174 In the Supreme Court of the State of Washington.

GEORGE D. HILL, HENRY L. YESLER, JAMES McNAUGHT, J. LEARY, J. W. GEORGE, D. N. HYDE, ELISHA P. FERRY, and JOSEPH F. McNAUGHT, Plaintiffs in Error,
vs.
THE COUNTY OF KING, Defendant in Error.
} No. 99. Motion.

Now, on this twelfth day of January, A. D. 1891, comes the defendant in error, The County of King, by its attorneys, Ronald &

Piles and W. S. Bush, and suggests the death of D. N. Hyde, one of the plaintiffs in error herein, and moves the court to substitute in his place as plaintiffs in error his executors, De Forest S. Hyde, James McNaught, and Florence Chick.

This motion is based on the suggestion of death and motion in the case already on file and upon papers herewith filed.

RONALD & PILES AND W. S. BUSH,
Attorneys for Defendant in Error.

In the Supreme Court of the State of Washington.

GEORGE D. HILL, HENRY L. YESLER, JAMES McNAUGHT, JOHN LEARY, J. W. GEORGE, D. N. HYDE, ELISHA P. FERRY, & JOSEPH F. McNAUGHT, Plaintiffs in Error,
vs.
THE COUNTY OF KING, Defendant in Error.
} No. 99. Notice.

To De Forest S. Hyde, Esq., James McNaught, Esq., and Florence Chick, executors of the last will and testament of the above-named D. N. Hyde, deceased:

Notice is hereby given you and each of you that at ten
175 o'clock a. m. on Monday, January, 12, 1891, or as soon thereafter as counsel can be heard, we will call up and submit to the court the accompanying motion to substitute you as plaintiffs in error in the above-entitled cause in place of D. N. Hyde, deceased.

RONALD & PILES AND W. S. BUSH,
Attorneys for Defendant in Error.

I, J. H. McGraw, sheriff of King county, State of Washington, do hereby certify that I received the annexed motion on the 16th day of December, 1890, and personally served the same on the same day on De Forest S. Hyde, he being one of the persons to whom said motion was directed, by delivering to him, said De Forest S. Hyde, personally in said King county a copy of said motion.

I further certify that after diligent search and inquiry I was unable to find James McNaught and Florence Chick in my county.

Dated this the 17th day of December, 1890.

J. H. McGRAW, *Sheriff*,
By FRANK LEVERE, *Deputy*.

Sheriff's fees:

Service	$1 00
Copy	80
Travel	20
Return	50
Total	$2 50

Filed Dec. 19, 1890.
——— ———, *Clerk*.
11—1378

176 In the Supreme Court of the State of Washington.

GEORGE D. HILL, H. L. YESLER, JAMES McNaught, Hillory Butler, David Kellogg, S. Baxter, and D. N. Hyde, Plaintiffs in Error, vs. THE COUNTY OF KING, Defendant in Error. } No. 99. Motion.

Now, on this twelfth day of January, A. D. 1891, comes the defendant in error, The County of King, by its attorneys, Ronald & Piles and W. S. Bush, and suggests the death of George D. Hill, one of the plaintiffs in error herein, and moves the court to substitute in his place as plaintiffs in error his executors, Eben Smith, Esq., David Kellogg, Esq., and Elisha P. Ferry, Esq.

This motion is based on the suggestion of death and motion in the case already on file and upon papers herewith filed.

RONALD & PILES AND W. S. BUSH,
Attorneys for Defendant in Error.

In the Supreme Court of the State of Washington.

GEORGE D. HILL, H. L. YESLER, JAMES McNaught, Hillory Butler, David Kellogg, S. Baxter, and D. N. Hyde, Plaintiffs in Error, vs. THE COUNTY OF KING, Defendant in Error. } No. 99. Notice.

To Eben Smith, Esq., David Kellogg, Esq., and Elisha P. Ferry, Esq., executors of the last will and testament of the late George D. Hill, deceased, one of the plaintiffs in error in the above-entitled cause:

177 Notice is hereby given you and each of you that at ten o'clock a. m. on Monday, January 12, 1891, or as soon thereafter as counsel can be heard, we will call up and submit to the court the accompanying motion to substitute you as plaintiffs in error in the above-entitled cause in place of George D. Hill, deceased.

RONALD & PILES AND W. S. BUSH,
Attorneys for Defendant in Error.

Service of above notice and motion annexed by copy thereof acknowledged this — day of December, 1890.

I, J. H. McGraw, sheriff of King county, State of Washington, do hereby certify that I received the annexed motion and notice on the 16th day of December, 1890, and personally served the same on the 19th day of December, 1890, on Eben Smith, Esq., and David Kellogg, Esq., they being persons to whom said motion and notice was directed, by delivering to each of said persons personally, in said King county, a true and correct copy of said motion and notice.

I further certify that after diligent search and inquiry I am un-

able to find Elisha P. Ferry, Esq., he being one of the persons named in said motion and notice in my county.

Dated this 19th day of December, 1890.

J. H. McGRAW, *Sheriff*,
By E. E. HUNT, *Deputy*.

Sheriff's fees:

Service	$2 00
Copies	1 60
Travel	20
Return	50
Total	$4 30

Filed Dec. 24, 1890.

SOL. SMITH, *Clerk*.

178 In the Supreme Court of the State of Washington.

MONDAY, *January 12th*, 1891.

GEORGE D. HILL, H. L. YESLER, JAMES MCNAUGHT, JOHN Leary, J. W. George, and D. N. Hyde *et al.*, Plaintiffs in Error,
vs.
THE COUNTY OF KING, Defendant in Error. } No. 99.

On reading and hearing the motion of Ronald & Piles and W. S. Bush, attorneys for defendant in error, and the affidavit of J. T. Ronald, Esq., suggesting the death of George D. Hill, Esq., one of the plaintiffs in error in the above-entitled cause, and certified copies of letters of administration and of the qualification of Eben Smith and David Kellogg as executors of the estate of George D. Hill, deceased, and after hearing counsel for defendant in error in favor of the motion, ordered that Eben Smith and David Kellogg, executors of the estate of George D. Hill, deceased, be substituted as plaintiffs in error herein in place of George D. Hill, plaintiff in error above named, and that the above-entitled cause be revived and continued against them as executors of the estate of said George D. Hill, deceased; and it is further ordered that thirty days be given said executors from this date in which to file briefs herein, and that the further hearing of this cause be continued for that period of time.

Entered page 237, Record, vol. 1, of supreme court.

179 In the Supreme Court of the State of Washington.

MONDAY, *February 23d*, 1891.

GEORGE D. HILL *et al.*, Plaintiffs in Error,
vs.
THE COUNTY OF KING, Defendant in Error. } No. 99.

And now, this cause coming on for hearing upon the transcript of the record of the district court of the third judicial district of

Washington, holding terms at Seattle, the plaintiff- in error came not, either in person or by counsel, but made default, the defendant in error appearing by Messrs. J. T. Ronald and W. S. Bush, of counsel, and waived oral argument and duly submitted the cause upon the printed briefs herein filed, and was taken under advisement by the court.

Entered page 287, Record, vol. I, of supreme court.

180 ELISHA P. FERRY, EBEN SMITH, DAVID Kellogg, Executors, *et al.*, Plaintiffs in Error,
vs.
THE COUNTY OF KING and JAMES MCNAUGHT *et al.*, Executors of the Last Will and Testament of D. N. Hyde, Defendants in Error.
No. 99.
Filed April 6, 1891.

Appeal from the superior court of King county.

The opinion of the court was delivered.

This action involves precisely the same questions presented in the case of Elisha P. Ferry, Eben Smith, and David Kellogg, executors of the last will and testament of Geo. D. Hill *et als. vs.* The County of King *et al.* The two causes were submitted together upon the printed briefs of counsel, and for the reasons given in the opinion in the former case herewith filed the judgment of the lower court is affirmed.

T. J. ANDERS, *C. J.*

We concur.

T. L. STILES, *J.*
R. O. DUNBAR, *J.*
ELMON SCOTT, *J.*

Filed April 6, 1891.

C. S. REINHART, *Clerk.*

181 In the Supreme Court of the State of Washington.

MONDAY, *April 6th*, 1891.

E. P. FERRY, EBEN SMITH, and DAVID KELLOGG, Executors of the Last Will and Testament of George D. Hill, Deceased, *et al.*, Plaintiffs in Error,
vs.
THE COUNTY OF KING and JAMES MCNAUGHT, De Forest S. Hyde, and Mrs. Florence Chick, Exec., etc., Defendant- in Error.
No. 99. Judgment.

This cause coming on to be heard, having been heretofore submitted to the court upon the transcript of the record of the superior court of King county and upon the argument of counsel, and the court having fully considered the same and being fully advised in the premises, and having filed its opinion in writing, it is now, on

this 6th day of April, A. D. 1891, on motion of Messrs. Ronald & Piles and W. S. Bush, of counsel for appellee-, defendants in error, considered, adjudged, and decreed that the judgment of the said superior court *court* be, and the same is hereby, affirmed with costs, and that the said County of King and James McNaught, De Forest S. Hyde, and Mrs. Florence Chick, executors of the last will and testament of D. N. Hyde, have and recover of and from the said E. P. Ferry, Eben Smith, and David Kellogg, executors of the last will and testament of George D. Hill, deceased; H. L. Yesler, James McNaught, John Leary, J. W. George, Elisha P. Ferry, & Joseph F. McNaught the costs of this action, taxed and allowed at $81.25 *dollars*, and that execution issue therefor; and it is further
182 ordered that this cause be remitted to the said superior court for further proceeding, in accordance with the opinion herein filed.

Entered page 323, Record, vol. I, of supreme court.

183 In the Superior Court of King County. No. 5475.

In the Supreme Court of the State of Washington.

THE COUNTY OF KING, Plaintiff,
vs.
GEORGE D. HILL, H. L. YESLER, JAMES McNAUGHT, JOHN LEARY, J. W. GEORGE, D. N. HYDE, ELISHA P. FERRY, and JOSEPH F. McNAUGHT, Defendants.
No. 99. Notice of Withdrawal.

Comes now Thomas Burke, Esq., one of the attorneys of record for the defendants H. L. Yesler, John Leary, and Elisha P. Ferry, and asks that his name be withdrawn as such attorney, and hereby gives notice of his withdrawal from any connection with this case on behalf of the defendants or any of them.

Dated March 23d, 1891.

THOMAS BURKE,
Attorney for the Defendants H. L. Yesler, John Leary, and Elisha P. Ferry.

Filed March 26th, 1891.
C. S. REINHART, *Clerk.*

184 In the Supreme Court of the State of Washington.

ELISHA P. FERRY *et al.*, Plaintiffs in Error,
vs.
THE COUNTY OF KING *et al.*, Defendants in Error.
No. 99. Petition.

To the chief justice of the State of Washington:

Come now the plaintiffs in error and petition the court for an allowance of a writ of error from the judgment in this cause to the Supreme Court of the United States and for the approval of

security to operate as a supersedeas pending the hearing of said cause in said Supreme Court of the United States.

This petition is based upon the fact that in the judgment in this action in the supreme court of the State of Washington the validity of an authority exercised under the United States was drawn in question and the decision was against the validity of such authority.

And upon the further ground that in said judgment rights and privileges were claimed under the statutes of the United States and authority was exercised under such statutes and the decision was against the right, privilege, and authority so claimed and exercised.

J. C. HAINES,
Attorney for Plaintiff in Error.

Let the petition be granted and the proper order prepared.

T. J. ANDERS,
Chief Justice of the Supreme Court of Washington.

June 29, 1891.

Filed May 30, 1891.
C. S. REINHART, *Clerk.*

185 In the Supreme Court of the State of Washington.

FRIDAY, *June* 5, 1891.

E. P. FERRY, EBEN SMITH, and DAVID KELLOGG, Executors of the Last Will and Testament of George D. Hill, Deceased; H. L. Yesler, James McNaught, John Leary, J. W. George, E. P. Ferry, and Joseph F. McNaught, Plaintiffs in Error,

vs.

THE COUNTY OF KING and JAMES MCNAUGHT, DE F. S. Hyde, and Mrs. F. H. Chick, Executors of the Last Will of D. N. Hyde, Deceased, Defendants in Error.

No. 99.

The above-named plaintiffs in error having petitioned the court for the allowance of a writ of error and appeal from the judgment in this cause entered on the 6th day of April, 1891, to the Supreme Court of the United States of America and for the approval of security to operate as a supersedeas pending the hearing of said cause in said Supreme Court of the United States, the court, being fully advised in the premises, allows said writ of error and appeal, and orders that said plaintiffs in error give security by bond and good and sufficient sureties in the sum of double the amount of said judgment, to wit, in the sum of twenty-one thousand (21,000) dollars, conditioned that said plaintiffs in error will prosecute their said writ of error to effect, and if they fail to make their appeal good shall answer all damages and costs; and it is further ordered that upon the filing and approval of said bond that all further proceedings in this court and in the superior court of King

county, State of Washington, be stayed until the further order of this court.

Done at Olympia this fifth day of June, 1891.

T. J. ANDERS,
Chief Justice Supreme Court of Washington.

Entered page 365, vol. 1, Record.

C. S. REINHART, *Clerk.*

186 In the Supreme Court of the State of Washington.

E. P. FERRY, EBEN SMITH, DAVID KELLOGG, Executors of the Last Will and Testament of George D. Hill, Deceased; H. L. Yesler, James McNaught, John Leary, J. W. George, E. P. Ferry, and Joseph F. McNaught, Plaintiffs in Error,

vs.

THE COUNTY OF KING, JAMES MCNAUGHT, DE FOREST S. HYDE, MRS. F. H. CHICK, as Executors of the Last Will of D. N. Hyde, Deceased, Defendants in Error.

No. 99. (Bond.)

Know all men by these presents that we, E. P. Ferry, Eben Smith, and David Kellogg, as executors of the last will and testament of George D. Hill, deceased; H. L. Yesler, James McNaught, John Leary, J. W. George, E. P. Ferry, and Joseph F. McNaught, as principals, and John Collins and Angie B. Collins, his wife; Fred. E. Sander and Nellie B. Sander, his wife; Sutcliffe Baxter and Harriet Baxter, his wife, as sureties, are held and firmly bound unto the County of King and James McNaught, De F. S. Hyde, and Mrs. F. H. Chick, executors of the last will and testament of D. N. Hyde, deceased, in the penal sum of twenty-one thousand dollars ($21,000.00), to be paid to the said obligees; to the payment of which, well and truly to be made, we bind ourselves, and our and each of our heirs, executors, administrators, and assigns, jointly, severally, and firmly by these presents.

Sealed with our seals and dated this 3d day of June, 1891.

The condition of the foregoing obligation is such that whereas the above-bounden obligors have taken a writ of error to the
187 Supreme Court of the United States of America to reverse the judgment rendered in the above-entitled cause on the 6th day of June, 1891, by the supreme court of the State of Washington:

Now, therefore, if the above-bounden E. P. Ferry, Eben Smith, David Kellogg, executors of the last will and testament of George D. Hill, deceased, and H. L. Yesler, James McNaught, John Leary, J. W. George, E. P. Ferry, and J. F. McNaught shall prosecute said writ of error to effect and, if they fail to make their appeal good,

answer all damages and costs, then the foregoing obligation to be void; otherwise to remain in full force and effect.

E. P. FERRY, [SEAL.]
EBEN SMITH, [SEAL.]
DAVID KELLOGG, [SEAL.]
Executors of the Last Will and Testament of George D. Hill, Deceased.
H. L. YESLER. [SEAL.]
J. W. GEORGE. [SEAL.]
JOHN LEARY. [SEAL.]
JOHN COLLINS. [SEAL.]
ANGIE B. COLLINS. [SEAL.]
FRED. E. SANDER. [SEAL.]
NELLIE B. SANDER. [SEAL.]
SUTCLIFFE BAXTER. [SEAL.]
HARRIET BAXTER. [SEAL.]
JAMES McNAUGHT,
By J. F. McNAUGHT,
His Attorney-in-Fact. [SEAL.]
JOSEPH F. McNAUGHT. [SEAL.]
E. P. FERRY. [SEAL.]

Executed in presence of—
J. E. LILLY.

As to E. P. Ferry:
N. S. PORTER.

As to all the others:
J. E. LILLY.

187½ STATE OF WASHINGTON, } *ss:*
County of King, }

H. L. Yesler, being first duly sworn, on oath deposes and says, *each for himself*, that he is one of the sureties on the foregoing obligation; that he is a resident of the State of Washington, and is worth the sum of fifty thousand dollars over and above all his just debts and liabilities, exclusive of property exempt from execution.

H. L. YESLER.

Subscribed and sworn to before me this 3d day of June, 1891.

J. E. LILLY,
Notary Public in and for Washington, Residing at Seattle.

STATE OF WASHINGTON, } *ss:*
County of King, }

Fred. E. Sander, being first duly sworn, on oath deposes and says, *each for himself*, that he is one of the sureties on the foregoing bond, a resident of the State of Washington, and worth more than fifty thousand dollars over and above all just debts and liabilities, exclusive of property exempt from execution.

FRED. E. SANDER.

Subscribed and sworn to before me this 3d day of June 1891.

J. E. LILLY,
Notary Public in and for Washington, Residing at Seattle.

188 STATE OF WASHINGTON, } ss:
County of King, }

Sutcliffe Baxter and John Collins, being first duly sworn, on oath deposes and says, each for himself, that he is one of the sureties on the foregoing obligation; that he is a resident of the State of Washington, and is worth the sum of fifty thousand dollars over and above all his just debts and liabilities, exclusive of property exempt from execution.

SUTCLIFFE BAXTER.
JOHN COLLINS.

Subscribed and sworn to before me this 3d day of June, 1891.

J. E. LILLY,
Notary Public in and for Washington, Residing at Seattle.

STATE OF WASHINGTON, } ss:
County of King, }

—— —— —— —— ——, being first duly sworn, on oath deposes and says, each for himself, that he is one of the sureties on the foregoing bond, a resident of the State of Washington, and worth more than fifty thousand dollars over and above all just debts and liabilities, exclusive of property exempt from execution.

—— ——.
—— ——.

Subscribed and sworn to before me this — day of June, 1891.

—— ——,
Notary Public in and for Washington, Residing at Seattle.

189 STATE OF WASHINGTON, } ss:
County of King, }

This is to certify that on this 3d day of June, A. D. 1891, before me, J. E. Lilly, a notary public in and for the State of Washington, duly commissioned and sworn, personally came Fred. E. Sander and Nellie B. Sander, his wife, known to be the individuals described in and who executed the within instrument, and acknowledged to me that they signed and sealed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.

And the said Nellie B. Sander, wife of the said Fred. E. Sander, upon an examination by me separate and apart from her said husband, when the contents of said instrument were by me fully made known unto her and she was by me fully apprised of her right and the effect of signing the within instrument, did, freely and voluntarily, separate and apart from her said husband, acknowledge the same, acknowledging that she did voluntarily, of her own free will and without the fear of or coercion from her husband, execute the

same as her free and voluntary act and deed for the uses and purposes therein mentioned.

Witness my hand and official seal the day and year in this certificate first above written.

[SEAL.] J. E. LILLY,
Notary Public in and for the State of Washington, Residing at Seattle.

190 STATE OF WASHINGTON, } ss:
County of King, }

This is to certify that on this 3d day of June, A. D. 1891, before me, J. E. Lilly, a notary public in and for the State of Washington, duly commissioned and sworn, personally came John Collins and Angie B. Collins, his wife, to me known to be the individual- described in and who executed the within instrument, and acknowledged to me that they signed and sealed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.

And the said Angie B. Collins, wife of the said John Collins, upon an examination by me separate and apart from her said husband, when the contents of said instrument were by me fully made known unto her and she was by me fully apprised of her right and the effect of signing the within instrument, did, freely and voluntarily, separate and apart from her said husband, acknowledge the same, acknowledging that she did voluntarily, of her own free will and without the fear of or coercion from her husband, execute the same as her free and voluntary act and deed for the uses and purposes therein mentioned.

Witness my hand and official seal the day and year in this certificate first above written.

[SEAL.] J. E. LILLY,
Notary Public in and for the State of Washington, Residing at Seattle.

191 STATE OF WASHINGTON, } ss:
County of King, }

This is to certify that on this 3d day of June, A. D. 1891, before me, J. E. Lilly, a notary public in and for the State of Washington, duly commissioned and sworn, personally came Sutcliffe Baxter and Harriet Baxter, his wife, known to be the individuals described in and who executed the within instrument, and acknowledged to me that they signed and sealed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.

And the said Harriet Baxter, wife of the said Sutcliffe Baxter, upon an examination by me separate and apart from her said husband, when the contents of said instrument were by me fully made known unto her and she was by me fully apprised of her rights and the effect of signing the within instrument, did, freely and voluntarily, separate and apart from her said husband, acknowledge the same, acknowledging that she did voluntarily, of her own free will and without the fear of or coercion from her husband, execute the

same as her free and voluntary act and deed for the uses and purposes therein mentioned.

Witness my hand and official seal the day and year in this certificate first above written.

[SEAL.]

J. E. LILLY,
Notary Public in and for the State of Washington, Residing at Seattle.

192 STATE OF WASHINGTON, } ss:
County of King, }

This is to certify that on the 3d day of June, A. D. 1891, before me, J. E. Lilly, a notary public in and for the State of Washington, duly commissioned and sworn, personally came H. L. Yesler, John Leary, and Joseph F. McNaught and J. W. George, to me known to be the individuals described in and who executed the within instrument, and acknowledged to me that they signed and sealed the same as their free and voluntary act and deed for the uses and purposes therein mentioned.

Witness my hand official seal the day and year in this certificate first above written.

[SEAL.]

J. E. LILLY,
Notary Public in and for the State of Washington, Residing at Seattle.

193 STATE OF WASHINGTON, } ss:
County of Thurston, }

This is to certify that on the 4th day of June, A. D. 1891, before me, J. E. Lilly, a notary public in and for the State of Washington, duly commissioned and sworn, personally came E. P. Ferry, to me known to be one of the executors of the will of George D. Hill, to me known to be the individual described in and who executed the within instrument, and acknowledged to me that he signed and sealed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

Witness my hand and official seal the day and year in this certificate first above written.

[SEAL.]

J. E. LILLY,
Notary Public in and for the State of Washington, Residing at Seattle.

STATE OF WASHINGTON, } ss:
County of Thurston, }

This is to certify that on this 4th day of June, A. D. 1891, before me, J. E. Lilly, a notary public in and for the State of Washington, duly commissioned and sworn, personally came E. P. Ferry, to me known to be the individual described in and who executed the within instrument, and acknowledged to me that — signed and sealed the same as — free and voluntary act and deed for the uses and purposes therein mentioned.

Witness my hand and official seal the day and year in this certificate first above written.

[SEAL.]

J. E. LILLY,
Notary Public in and for the State of Washington, Residing at Seattle.

194 STATE OF WASHINGTON, } ss :
County of King, }

This is to certify that on this 3d day of June, A. D. 1891, personally appeared before me J. E. Lilly, a notary public in and for said county and State, Joseph F. McNaught, who is personally known to me to be the same person described in and who executed by power of attorney the annexed instrument as the attorney-in-fact of James McNaught, named in the annexed instrument as the party thereto and therein described as the party executing the same by his said attorney.

And the said Joseph F. McNaught acknowledged to me that he executed the same freely and voluntarily as and for the free and voluntary act and deed of the said James McNaught, and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

J. E. LILLY,
Notary Public in and for Washington.

STATE OF WASHINGTON; } ss :
County of King, }

This is to certify that on this 3d day of June, 1891, before me, the undersigned, a notary public in and for the State of Washington, personally appeared Eben Smith and David Kellogg, to me known to be the executors of the last will and testament of George D. Hill, deceased, and they each then and there personally acknowledged to me that he signed and sealed the foregoing instrument on behalf of the estate of said George D. Hill, deceased, as such executor, freely and voluntarily for the uses and purposes therein mentioned.

[SEAL.]

J. E. LILLY,
Notary Public in and for the State of Washington, Residing at Seattle.

The foregoing bond and the sureties thereon are hereby approved this fifth day of June, 1891.

T. J. ANDERS,
Chief Justice of the Supreme Court of Wash.

195 (Endorsed:) Bond. Filed this June 5, 1891. C. S. Reinhart, clerk.

196 UNITED STATES OF AMERICA, *ss*:

E. P. FERRY, EBEN SMITH, and DAVID KELLOGG, Executors of the Last Will of George D. Hill, Deceased; H. L. Yesler, James McNaught, John Leary, J. W. George, E. P. Ferry, and J. F. McNaught, Plaintiffs in Error,

vs.

THE COUNTY OF KING, JAMES MCNAUGHT, DE F. S. HYDE, and Florence Chick Hyde, Executors of the Last Will of D. N. Hyde, Deceased, Defendants in Error.

The President of the United States to the honorable the judges of the supreme court of the State of Washington, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Washington, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the said E. P. Ferry, Eben Smith, and David Kellogg, executors of the last will of George D. Hill, deceased, and H. L. Yesler, James McNaught, John Leary, J. W. George, E. P. Ferry, and J. F. McNaught, *are* plaintiffs in error, and The County of King and James McNaught, De F. S. Hyde, and Florence Hyde Chick, executors of the last will of D. N. Hyde, deceased, *are* defendants in error, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein
197 was drawn in question the validity of a *a* statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or a treaty or a statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said E. P. Ferry, Eben Smith, and David Kellogg, executors of the last will and testament of George D. Hill, deceased, H. L. Yesler, James McNaught, John Leary, J. W. George, E. P. Ferry, and J. F. McNaught, as by their complaint appears, we *are* willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, so that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

198 Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, the 8th day of June, 1891.

{ Seal United States Circuit Court, District of Washington, Northern Division. }

A. REEVES AYRES,
Clerk of the Circuit Court of the United States for the Ninth Circuit,
By R. M. HOPKINS, *Deputy.*

Allowed by—
—— ——.

199 [Endorsed:] 99. Writ of error. Filed June 9, 1891. C. S. Reinhart, clerk; —— ——, dep't.

200 I, J. H. Woolery, sheriff of King county, State of Washington, do hereby certify that I received the annexed citation on the 11th day of June, 1891, and personally served the same on the 12th day of June, 1891, on The County of King, it being a defendant named in said citation, by delivering to and leaving with F. A. Twichell, auditor of said King county, personally, in said King county, a copy of said citation.

I further certify that on the 18th day of June, 1891, I served said citation on James McNaught, he being a defendant named in said citation, by delivering to him, said defendant, personally, in said King county, a copy of said citation.

I further certify that after diligent search and inquiry I was unable to find def. S. Hyde and Florence Hyde Chick, they being defendants named in said citation, in my county.

Dated this the 15th day of June, 1891.

J. H. WOOLERY, *Sheriff,*
By M. H. GORMLEY, *Deputy.*

Sheriff's fees:

Service	$2 00
Copies	80
Travel	40
Total	$3 20

Fees paid.

201 & 202 In the Supreme Court of the State of Washington.

E. P. FERRY, EBEN SMITH, and DAVID KELLOGG, Executors of the Last Will and Testament of George D. Hill, Deceased; H. L. Yesler, James McNaught, John Leary, J. W. George, E. P. Ferry, and J. F. McNaught, Plaintiffs in Error,

vs.

THE COUNTY OF KING and JAMES MCNAUGHT, DE F. S. Hyde, Florence Hyde Chick, Executors of the Last Will of D. N. Hyde, Deceased, Defendants in Error.

No. 99.

To the above-named defendants in error, The County of King and James McNaught, De F. S. Hyde, and Florence Hyde Chick, executors of the last will and testament of D. N. Hyde, deceased, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States of America, to be holden at the city of Washington on the second Monday in October, 1891, pursuant to an appeal filed in the office of the clerk of the supreme court of the State of Washington, wherein E. P. Ferry, Eben Smith, and David Kellogg, executors of the last will and estate of George D. Hill, deceased, and H. L. Yesler, James McNaught, John Leary, J. W. George, E. P. Ferry, and J. F. McNaught are plaintiffs in error and The County of King and James McNaught, De F. S. Hyde, and Florence Hyde Chick, executors of the last will of D. N. Hyde, deceased, are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Melville W. Fuller, Chief Justice of *of* the United States, this 5th day of June, 1891.

T. J. ANDERS,
Chief Justice of the Supreme — of Washington.

202½ [Endorsed:] No. 99. 390, M. In the supreme court of the State of Washington. E. P. Ferry *et al.*, pl'ff's in error, *vs.* County of King *et al.*, defendant- in error. Citation. Filed this 5th day of June, 1891. C. S. Reinhart, clerk. J. C. Haines, Burke building, Seattle, attorney for pl'ffs in error. 4.40. Sheriff's office, King county, Washington. Rec'd Jun- 11, 1891.

Served County of King 6, 12, '91, on F. A. Twichell, auditor; served Jas. McNaught 6, 13, 91.

GORMLEY, *Dep.*

203 In the Supreme Court of the United States.

E. P. FERRY, EBEN SMITH, and DAVID KELLOGG, Executors of the Last Will of George D. Hill, Deceased; H. L. Yesler, James McNaught, John Leary, J. W. George, E. P. Ferry, and J. F. McNaught, Plaintiffs in Error,
vs.
THE COUNTY OF KING and JAMES MCNAUGHT, DE F. S. HYDE, and Florence Chick Hyde, Executors of the Last Will of D. N. Hyde, Deceased, Defendants in Error. } 99.

October term, in the year of our Lord one thousand eight hundred and ninety.

Now, to wit, on this second Monday in September, 1891, in the same term, before the justices of the Supreme Court of the United States, at the Capital, in the city of Washington, come said plaintiffs in error, by J. C. Haines, their attorney, and say that in the record and proceedings in the above-entitled matter and in the giving of judgment therein there is manifest error in this, to wit:

1. That by said record and proceedings aforesaid it appears that said judgment was given against said plaintiffs in error and in favor of said defendants in error and against the validity of an authority of the legislature of the Territory of Washington to enact section 2947 of the Code of Washington, which provided for the settling of accounts of county officers by the board of county commissioners, exercised under section 1851 of the Revised Statutes of the United States, which provided that the legislative power in every Territory shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States.

And in this, to wit:

2. That by said record and proceedings aforesaid it appears
204 that said judgment was given against said plaintiffs in error and in favor of said defendants in error and against the validity of an authority exercised under the United States, to wit, against the authority of the legislature of the Territory of Washington to enact section 2673 of the Code of Washington, which provided for the auditing of accounts of county officers by the board of county commissioners, exercised by said legislature of the Territory of Washington under section 1851 of the Revised Statutes of the United States, which provided that the legislative power of every Territory shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States.

And in this, to wit:

3. That by said record and said proceedings it appears that said judgment was given against the plaintiffs in error and in favor of said defendants in error and against the validity of an authority exercised under the United States, to wit, against the authority of the legislature of the Territory of Washington to enact section 2681 of the Code of Washington, which provided that the board of county

commissioners should have power to compound or release, in whole or in part, any debt due to their county when in their opinion the interests of their county will not be prejudiced thereby, exercised by the said legislature of the Territory of Washington under section 1851 of the Revised Statutes of the United States, which provided that the legislative power of every Territory shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States.

And in this, to wit:

4. And by said record and said proceedings it appears that said judgment was given against said plaintiffs in error and in
205 favor of the defendants in error and against the validity of a right or privilege exercised under the United States, to wit, the right claimed under the provisions of section 93 of the Code of Washington to demand of the plaintiffs in error a verified statement of the items of their account against the plaintiffs in error, which said section 93 of the Code of Washington was enacted by the legislature of the Territory of Washington under the authority of section 1851 of the Revised Statutes of the United States, which provided that the legislative power of every Territory shall extend to all rightful subjects of legislation not inconsistent with the Constitution and laws of the United States.

Whereas by the law of the land said judgment ought to have been given for said plaintiffs in error and in favor of the authority exercised under the United States and in favor of the right and privilege claimed under the United States and in favor of the said plaintiffs in error and against said defendants in error.

The plaintiffs in error pray that the judgment aforesaid for the errors aforesaid and other errors in the record and proceedings first aforesaid may be reversed, annulled, and altogether held for nothing, and that said plaintiffs in error may be restored to all things which they lost by occasion of said judgment.

J. C. HAINES,
Attorney for Plaintiffs in Error, Burke Building, Seattle, Washington.

[Endorsed:] 99. Supreme Court. E. P. Ferry *et al.*, plaintiffs in error, *vs.* The County of King *et al.*, defendants in error. Assignment of errors. Filed Sept. 9, 1891. C. S. Reinhart, clerk.

206 STATE OF WASHINGTON, } ss:
County of Thurston, }

I, C. S. Reinhart, clerk of the supreme court of the State of Washington and *ex officio* custodian of the records of the supreme court of the late Territory of Washington, do hereby certify that the above and foregoing is a full, true, and correct transcript of the record in the above-entitled cause now on file in this court and the journal entries made therein, together with the original writ of error of the Supreme Court of the United States and the original citation.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Olympia, this 9th day of September, A. D. 1891.

[Seal of the Supreme Court, State of Washington.]

C. S. REINHART, *Clerk.*

Endorsed on cover: Case No. 14,852. Washington supreme court. No. 1378. E. P. Ferry, Eben Smith, and David Kellogg, executors of George D. Hill, deceased, *et al.*, plaintiffs in error, *vs.* The County of King & James McNaught, De F. S. Hyde, & Florence Hyde Chick, executors of D. N. Hyde, deceased. Filed September 21, 1891.

Office Supreme Court U. S.
FILED.
NOV 17 1891
JAMES H. McKENNEY,
CLERK

IN THE

SUPREME COURT

OF THE

UNITED STATES.

E. P. FERRY, EBEN SMITH and DAVID KELLOGG, Executors of the Last Will of GEORGE D. HILL, Deceased, H. L. YESLER, JAMES McNAUGHT, JOHN LEARY, J. W. GEORGE, E. P. FERRY and J. F. McNAUGHT,
Plaintiffs in Error,

vs.

THE COUNTY OF KING, and JAMES McNAUGHT, DeF. S. HYDE and FLORENCE HYDE CHICK, Executors of the Last Will of D. N. HYDE, Deceased.
Defendants in Error.

No. .....

ON MOTION TO DISMISS WRIT OF ERROR OR AFFIRM THE JUDGMENT

BRIEF OF PLAINTIFFS IN ERROR.

J. C. HAINES,
Attorney for Plaintiffs in Error.

KOCH & OAKLEY PRINTING COMPANY

IN THE

SUPREME COURT

OF THE

UNITED STATES.

E. P. FERRY, EBEN SMITH and DAVID KELLOGG, Executors of the Last Will of GEORGE D. HILL, Deceased, H. L. YESLER, JAMES McNAUGHT, JOHN LEARY, J. W. GEORGE, E. P. FERRY and J. F. McNAUGHT,
Plaintiffs in Error.

vs.

THE COUNTY OF KING, and JAMES McNAUGHT, DeF. S. HYDE and FLORENCE HYDE CHICK, Executors of the Last Will of D. N. HYDE, Deceased.
Defendants in Error.

No. .....

ON MOTION TO DISMISS WRIT OF ERROR OR AFFIRM THE JUDGMENT

BRIEF OF PLAINTIFFS IN ERROR.

J. C. HAINES,
Attorney for Plaintiffs in Error.

STATEMENT OF THE CASE.

From the first Monday in January, 1883, until the first Monday in January, 1885, Geo. D. Hill, one of the plaintiffs in error in the above-entitled action, was County Treasurer of the County of King, in the Territory of Washington, and, upon entering upon the duties of said office, Geo. D. Hill made, executed and delivered, in accordance with law, to the County of King, a bond in the sum of sixty thousand dollars, conditioned for the faithful performance of his duties as such treasurer, and the payment, according to law, of all moneys received by him. H. L. Yesler, James McNaught, John Leary, J. W. George, E. P. Ferry, J. F. McNaught and D. N. Hyde were sureties upon said bond. At the May session of the Board of County Commissioners of each year that he was in office, George D. Hill attended with his books and vouchers before the board, and his accounts were duly settled. He surrendered his vouchers to the County Commissioners, who destroyed them after they had examined and approved them. Those settlements were not disputed upon the trial of this cause, nor were they appealed from at the time they were made or questioned in any manner until the beginning of this action; but in August, 1887, the different officers of the county claimed that Geo. D. Hill, as County Treasurer, had received, as such Treasurer, moneys to the amount of $5,539.51, which he had not paid over to the

county, or in any manner accounted for the same, and instituted suit against said George D. Hill, and his sureties aforesaid, to recover this amount, with interest from the 5th day of January, 1883. After service upon the defendants of the complaint in the action, the defendants appeared and made a demand in writing upon the plaintiff in error to deliver to the defendants the items of the account sued upon, and, in addition thereto, made a motion in Court for an order upon the defendants in error to deliver to the plaintiffs in error a bill of particulars of the claim of the defendants in error. The demand was refused and the motion denied, to which the plaintiffs in error then and there excepted, and the exception was allowed. Thereupon the issues were formed, and by consent the cases were referred generally to a referee. Upon the hearing before the referee the plaintiffs in error objected to the introduction of any testimony on behalf of the defendant in error on the ground that, although a demand in accordance with the statute was made by the plaintiffs in error upon the defendants in error for the items of the account sued upon, no such items were furnished, and on the further ground that, although a motion for that purpose was made in accordance with law, no bill of particulars had been furnished to the plaintiffs in error. The objection to the introduction of testimony was overruled, and exception was then and there taken, and the exception allowed.

The plaintiffs in error also made a motion for an order to make the complaint of the defendant in error more definite and certain, in order to show the items of the account, which motion was denied, and to which ruling denying the motion the plaintiffs in error then and there excepted, and the exception was allowed. After the testimony was closed, the referee made his findings of fact and conclusions of law in favor of the defendants in error. And upon the report of said referee the plaintiffs in error made the following motion to set aside the report of the referee, and for a new trial, as appears in the brief of the defendants in error.

The said motion was overruled, to which the defendants in error then and there excepted, and the exception was then and there allowed, and the judgment was entered by the District Court of the Third Judicial District, holding terms at Seattle, against the plaintiffs in error, and from this judgment the plaintiffs in error appealed to this Court.

The Supreme Court of this State affirmed the judgment of the lower Court.

The plaintiffs in error seek by means of this writ of error to have the judgment of the Supreme Court of Washington reversed.

POINTS ON LAW AND FACTS.

In answer to the motion of the defendants in error to dismiss the writ of error or affirm the judgment of the State Court the plaintiffs in error respectfully present the following points and authorities to support their contention that the writ of error was properly sued out.

a. Section 709 of the Revised Statutes of the United States provides that: "A final judgment or decree in a suit in the highest Court of a State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision is against their validity * * * * , may be re-examined and reversed or affirmed in the Supreme Court upon a writ of error."

b. Section 1851 of the Revised Statutes of the United States provides that: "The legislative power of every Territory shall extend to all rightful subjects of legislation, not inconsistent with the Constitution and laws of the United States."

c. Under the authority given by Section 1851 of the

Revised Statutes of the United States, the Legislature of the Territory of Washington enacted Section 2947 of the Code of Washington, which provided that: "Each County Treasurer must attend, with his books and vouchers before the Board of County Commissioners of his county at its May session in each year and settle his account before said Board."

Also Section 2673, paragraph 5, of the Code of Washington, which provides that: "The several Boards of County Commissioners are authorized and required * * * to allow all accounts legally chargeable against such county not otherwise provided for, and to audit the accounts of all officers having the care, management, collection or disbursement of any money belonging to the county or appropriated to its benefit."

It is claimed by the plaintiffs in error that the decision of the District Court of the Territory and the Supreme Court of the State of Washington in holding that the settlement of accounts by Treasurer Hill and the Board of County Commissioners was not binding upon the county ignored the provisions of the Code of Washington above referred to, and by necessary intendment held that the Legislature of the Territory of Washington had no power to enact such provisions of the Code.

d. Under the authority given by Section 1851 of the

Revised Statutes of the United States the Legislature of the Territory of Washington enacted Section 2681 of the Code of Washington, which provides that: "The County Commissioners of their respective counties shall have power to compound and release in whole or in part any debt due to their county, when in their opinion the interest of their county will not be prejudiced thereby."

It is claimed by the plaintiffs in error that when the accounts of Hill were audited the Board of County Commissioners accepted them as correct, and released Hill from any liability because of any deficiency that there might then have been. The decision of the District Court and the Supreme Court of the State, expressly held that the County Commissioners had not this power given by this section of the Code.

c. Under the authority given by section 1851 of the Revised Statutes of the United States, the Legislature of the Territory of Washington enacted section 2695 of the Code of Washington, which provides that "Any person may appeal from the decision of the Board of County Commissioners to the next term of the District Court of the proper district."

It is claimed by the plaintiffs in error that the clause quoted from section 2695 of the Code of Washington pre-

scribed the method of appeal from the decision of the Board of County Commissioners, and that unless an appeal is taken in the manner prescribed, the decision of the Board of County Commissioners is final.

f. Under the authority given by section 1851 of the Revised Statutes of the United States the legislature of the Territory of Washington enacted section 93 of the Code of Washington which provides:

"It shall not be necessary for a party to set forth in a pleading * * * the items of an account therein alleged; but unless he file a verified copy thereof with such pleadings, and serve the same on the adverse party, he shall, within ten days after a demand thereof, in writing, deliver to the adverse party a copy of such instrument of writing, or the items of an account, verified by his own oath, or that of his agent or attorney, to the effect that he believes it to be true, or be precluded from giving evidence thereof."

It is claimed by the plaintiff in error that, under this section of the Code, they had a right to insist upon the items of the account, for although the suit was upon a bond still the subject matter was an account, and that the District Court of the Territory and the Supreme Court of the State in holding that such provision of the Code was ineffective decided against the validity of an authority exercised under the United States.

g. The Legislature of the Territory of Washington, by enacting these sections of the Code of Washington above mentioned, exercised an authority given by section 1851 of the Revised Statutes of the United States, and so acting, the act of the Territorial Legislature became the act of Congress, and the District Court of the Territory and the Supreme Court of the State in deciding against the validity of the several clauses of the Code, decided against the validity of an authority exercised under the United States.

h. The plaintiffs in error set forth in their briefs in the Supreme Court of the State of Washington, their claims under the several provisions of the Code mentioned in this brief, thus bringing distinctly before the Court the validity of the said sections of the Code. Only by holding these sections of the Code in effect invalid could the judgment be rendered against the plaintiffs in error.

i. To give the Supreme Court of the United States jurisdiction upon writs of error to the Supreme Court of a State it is not necessary that a federal question was raised and presented to the Court.

Crowell vs. Randell, 10 Peters, 368.

Armstrong vs. Athens Co., 16 Peters, 281.
Hickie vs. Starke, 1 Peters, 94.
Bridge Proprietors vs. Hoboken Co., 1 Wallace, 143.
Furman vs. Nichol, 8 Wallace, 44.
Murray vs. Charlestown, 96 United States, 442.
Eureka Lake Co. vs. Yuba County, 116 United States 410

j. The question may be raised for the first time in the Supreme Court of the State.
Myrick vs. Thompson, 99 United States, 291.

k. It is not necessary that there should be any mention of the federal question in the opinion of the State Court.
Arrowsmith vs. Harmoning, 118 United States, 194.

l. It is not necessary to show that the State Court erred in its decision.
Furman vs. Nichol, 8 Wallace, 44.

Respectfully submitted,

J. C. HAINES,

Attorney for Plaintiffs in Error.

Office Supreme Court U. S.
FILED.
OCT 22 1891
JAMES H. McKENNEY

IN THE

SUPREME COURT

OF THE

UNITED STATES.

E. P. FERRY, EBEN SMITH and DAVID KELLOGG, Executors of the Last Will of GEORGE D. HILL, Deceased, H. L. YESLER, JAMES McNAUGHT, JOHN LEARY, J. W. GEORGE, E. P. FERRY and J. F. McNAUGHT,
Plaintiffs in Error,

vs.

THE COUNTY OF KING, and JAMES McNAUGHT, DeF. S. HYDE and FLORENCE HYDE CHICK, Executors of the Last Will of D. N. HYDE, Deceased,
Defendants in Error.

No. 1378

ON MOTION TO DISMISS WRIT OF ERROR OR AFFIRM THE JUDGMENT.

BRIEF OF DEFENDANTS IN ERROR.

John Paul Jones
Reese H. Voorhees
of Counsel

RONALD & PILES,
Attorneys for Defendants in Error.

LOWMAN & HANFORD STATIONERY & PRINTING CO., SEATTLE.

The paging of the record cited herein is that of transcript

IN THE

SUPREME COURT

OF THE

UNITED STATES.

E. P. FERRY, EBEN SMITH AND DAVID KELLOGG, EXECUTORS OF THE LAST WILL OF GEORGE D. HILL, DECEASED, H. L. YESLER, JAMES McNAUGHT, JOHN LEARY, J. W. GEORGE, E. P. FERRY AND J. F. McNAUGHT,
Plaintiffs in Error,

vs.

THE COUNTY OF KING, AND JAMES McNAUGHT, DEF. S. HYDE AND FLORENCE HYDE CHICK, EXECUTORS OF THE LAST WILL OF D. N. HYDE, DECEASED,
Defendants in Error.

No._____

ON MOTION TO DISMISS WRIT OF ERROR OR AFFIRM THE JUDGMENT.

BRIEF OF DEFENDANTS IN ERROR

STATEMENT OF FACTS OF THE CASE.

From the first Monday in January, 1883, until the first Monday in January, 1885, George D. Hill was County Treasurer of the County of King, in the Territory of Washington, and upon entering upon the duties of said office, made, executed and delivered to the County of King a bond in the sum of sixty thousand ($60,000) dollars conditioned as required by law. The sureties upon said bond were H. L. Yesler, James McNaught, John Leary, J. W. George, D. N. Hyde, E. P. Ferry and Joseph F. McNaught. In August, 1887, the County claimed that George D. Hill, as County Treasurer, had received moneys to the amount of five thousand five hundred and thirty-nine and 51-100 ($5,539.51) dollars during his term which he had not paid over to the County, nor in any manner accounted for the same, and instituted suit against said Hill and his sureties aforesaid.

The complaint alleges the election of said Hill, the execution of the bond setting the same out in the complaint, the aggregate receipts of Hill, as Treasurer, during his term, and the total amount accounted for by him to the Board of Commissioners, leaving a difference of five thousand five hundred and thirty-nine and 51-100 ($5,539.51) dollars, which sum the County alleges he failed to account for contrary to the conditions of the said bond. The complaint then sets forth more specifically the items composing this difference, alleging that in the various settlements had between the Treasurer and the Board of County Commissioners

of King County, he was charged with less than he had actually collected and with less than he actually should have been charged with, and that by mistake and error there was overlooked by the Board of Commissioners and by the Auditor certain sums which were not charged to the Treasurer and with which he was justly chargeable. It further alleges that in the several book accounts kept and settlements had between the said Treasurer and the Auditor and the said Board of County Commissioners touching the sums received as Treasurer aforesaid, he received and was allowed certain credits, setting forth the credits and the items of the various funds in particular; and further alleges that the credits so given were given by a mistake and error on the part of the said Treasurer and County Auditor and Board of County Commissioners, by reason of which mistakes and errors the credits so given were too large by certain sums specified. Wherefor the plaintiff prayed for judgment against the defendants and each of them in the sum of five thousand five hundred and thirty-nine and 51-100 ($5,539.51) dollars, with interest as provided by law.

The defendants admit the election, and the execution of the bond, but deny that the Treasurer failed to account for any sums justly chargeable to him as such Treasurer. They plead in addition several affirmative defenses, alleging various settlements at times prescribed by law, between the Treasurer and the Board of County Commissioners, and set forth the various sums charged against the Treasurer, and the various credits allowed the Treasurer in such settlements.

Plaintiff replying to these affirmative defenses of the defendant's admits the receipt by the Treasurer in said settlements of the credits mentioned in the particular funds, and sets forth particularly the various items of credit to which the Treasurer was actually entitled on account of the particular funds mentioned and that the difference between the credit actually received by the Treasurer on account of such funds and the credit to which he was actually entitled was allowed said Treasurer by mistake and error on the part of said Board of County Commissioners and Auditor in the various settlements.

Issue being formed the case was, by consent, referred generally to a referee; after the testimony was closed the referee made his Findings of Facts and Conclusions of Law in favor of the County.

Upon the report of said referee the plaintiffs in error, being defendants below, moved to set aside the report of the referee and for a new trial on the following grounds:

(See record pages 107-108).

First. "Irregularity in the proceedings on the part of the plaintiff in this, that said plaintiff failed to set forth or specify in the pleadings the items of the account sued on, and failed and refused to furnish defendants the items of said account after a proper demand therefor before the trial."

Second. "Irregularity in the proceedings of said referee in admitting evidence of said account offered by said plaintiff notwithstanding the failure of said plaintiff to either set forth in the pleadings the items of the account sued on or

furnish said items to the defendants after a proper demand therefor before the trial and against defendants' objections made at the time of the offer of said evidence."

Third. "Irregularity in the proceedings and abuse of discretion on the part of the referee; in admitting in evidence, against defendants' objections, original books, papers and documents which are public records required by law to be and remain in the custody of the auditor of King county."

Fourth. "Error in the assessment of the amount of the recovery, the amount as per findings being too large."

Fifth. "Insufficiency of the evidence to justify the said findings and decision of the said referee."

Sixth. "The said findings and decision of the referee are against law."

Seventh. "Error in law occurring at the trial and excepted to at the time by the defendant."

The Court denied the motion and rendered judgment upon the findings of the referee in favor of the plaintiff and against the defendants and each of them in the sum of five thousand four hundred and seventy-five ($5475) dollars, with ten per cent interest from the first Monday of January, 1885, and costs.

(See record, pages 109, 110).

After the rendition of judgment by the Lower Court and prior to the appeal to the Supreme Court of the State, the defendant Hyde died. His executors failing to join in the appeal were made defendants in error upon the appeal to the Supreme Court of the state.

After appealing to the Supreme Court and before hearing, the principal defendant, Hill, died and his executors were substituted.

The case proceeded to hearing on the 6th day of April, 1891, and the Supreme Court of the State affirmed the judgment of the Lower Court.

(See page 181 of the record).

This judgment plaintiffs in error seek by these proceedings to have reviewed by this Court. The defendant in error, the county of King, has appeared specially and filed its motion herein as follows:

I.

That the so-called writ of error be dismissed for want of jurisdiction of this Court to hear the same, and because the so-called writ of error is void, and the defendant in error so appearing specially as aforesaid, alleges the following irregularities affecting the jurisdiction of this Court as aforesaid.

First. The record fails to show that the so-called or pretended writ of error has been allowed.

Second. The so-called or pretended writ of error and citation are not made returnable within the time prescribed by law and the rules of this Court, and is void.

Third. The record shows that no federal question is involved or was raised in, or decided by the Supreme Court of the State of Washington.

II.

The defendant in error further moves the Court that the judgment of the said Supreme Court of the State of Washington herein rendered be affirmed on the ground that, although the record may show that this Court has jurisdiction, it is manifest that this writ was taken for delay only, and that the question on which the jurisdiction depends is so frivolous as not to need further argument, and that said cause was rightly decided by the Supreme Court of the said State of Washington.

We notice these objections in the order of their statement:

First. The writ of error has not been allowed by the Chief Justice of the Supreme Court of the State of Washington nor by a Justice of the Supreme Court of the United States.

(See record, page 185).

Second. The so-called writ of error which was issued on the 8th of June, 1891, is made returnable on the second Monday in October, 1891. This is contrary to subdivision 5, rule 8, of this Court. And the said writ of error is not signed by the clerk of the Supreme Court of the United States, nor by the clerk of a Circuit Court of the United States.

Third. No federal queston is raised or involved.

We fail to find a single assignment of error that expressly or by fair implication raises and presents any federal question as laid down in section 709 of the Revised Statutes.

There is nothing in the answer that even hints at such a question. The record and the opinion of the Supreme Court show that no such question was ever raised by the plaintiffs in error. True, the State Supreme Court in their opinion referred to the Revised Statutes as sustaining a proposition laid down by said Court, but no right was specially set up or otherwise by the plaintiffs in error in the pleadings in this case, nor did the Supreme Court decide any federal question.

It must affirmatively appear from the record that a federal question was raised and presented to the State Court and that the decision of such question was necessary. It is not enough that a federal question might have been raised; nor is it enough that a federal question heretofore raised might have been decided; nor is it enough that the party intended to raise a federal question. The section of the Revised Statutes upon which plaintiffs in error relied must have been specially set up and brought to the notice of the State Court.

Hoyt vs. Thompson, 1 Black, 518.
Railroad Company vs. Gothard, 114 U. S., 136.
The Victory, 6 Wall., 382.
Manufacturing Company vs. Massachusetts, 6 Wallace, 632.
Gibson vs. Chouteau, 8 Wallace, 314.
Memphis vs. Bank, 7 Wallace, 260.

As we understand the decisions of this Court the following propositions are adhered to:

First. That it is essential to the jurisdiction of this Court over the judgment of the State Court that it shall appear that one of the questions mentioned in the act must have been raised and presented to the Court.

Second. That it must have been decided by the State Court or that its decision was necessary to the judgment or decree rendered in the case.

Third. That the decision must have been against the right claimed or asserted by plaintiffs in error under the Constitution, treaties, laws or authority of the United States.

Fourth. These things appearing, this Court has jurisdiction and must examine the judgment so far as to enable it to decide whether this claim of right was correctly adjudicated by the said Court.

Fifth. If it finds that it was rightly decided, the judgment must be affirmed.

"It must clearly appear from the transcript filed by the plaintiff in error, that a certain provision of the Constitution or act of Congress was relied on by the party who brings the writ of error, and that the right thus claimed by him was denied."

Bridge Proprietors vs. Hoboken, 1 Wallace, 143.
Murdock vs. Memphis, 20 Wallace, 636.
Santa Cruz County vs. Santa Cruz R. R. Co., 111 U. S., 361.
Chouteau vs. Gibson, 111 U. S., 200.
Ames vs. Kansas, 111 U. S., 449.

Brown vs. Colorado, 106 U. S., 95.
Detroit R. R. Co. vs. Guthard, 114 U. S., 133.
Starrin vs. New York, 115 U. S., 248.
Germania Insurance Co. vs. Wisconsin, 119 U. S., 473.
Spies vs. Illinois, 123 U. S., 131.
Winn vs. Norris, 20 How., 3.
Mathesson vs. Bank, 7 Wallace, 260.
Susquehanna Boom Co. vs. West Branch Boom Co., 110 U. S., 57.
Simmerman vs. Nebraska, 116 U. S., 54.
French vs. Hopkins, 124 U. S., 524.
Brooks vs. Missouri, 124 U. S., 394.
Chappell vs. Bradshaw, 128 U. S., 132.
Clarke vs. Pennsylvania, 128 U. S., 397.
Kansas E. Ass'n vs. Kansas, 120 U. S., 103.
Phanix vs. Scharnweber, 125 U. S., 59.

A federal question cannot be considered if raised for the first time in the argument of counsel before the State Court.

Parmelee vs. Lawrence, 11 Wallace, 38.
Susquehanna Boom Co. vs. West Branch Boom Co., 110 U. S., 57.

Nor can the opinion of the Court be resorted to for the purpose of showing that a question of federal cognizance was decided by the State Court.

Gibson vs. Chouteau, 8 Wallace, 314,
Rector vs. Ashley, 6 Wallace, 142.
Williams vs. Norris, 12 Wheaton, 117.
K. & P. R. R. Co. vs. P. & K. R. R. Co., 14 Wallace, 23.

The examination of the record discovers the fact that only two questions were raised by plaintiffs in error and decided by the State Supreme Court, namely:

First, The conclusiveness of the various settlements between the Treasurer and Board of County Commissioners, and

Second, The admissibility of certain evidence.

We quote so much of the opinion of the Supreme Court as refers to the United States Statutes: "But the learned counsel for the plaintiffs in error contends that the settlement of the accounts of the Treasurer Hill with the Board of County Commissioners is conclusive between the parties; that the Board of Commissioners in making such settlement acted in a judicial capacity, and that their decision cannot be collaterally attacked. But we think the position of counsel is clearly untenable. The judicial power of the late Territory of Washington was vested by the organic act of the Supreme Court, District Courts, Probate Courts and Justices of the Peace. (*See Sec. 1907, Rev. St., U. S.*) It follows therefore that Boards of County Commissioners could not have been clothed with judicial powers or functions, even by an act of the Legislature, and much less could they exercise said functions in the absence of Legislative enact-

ment. The power exercised by the Board of County Commissioners, in making settlement with the Treasurer of their County, is of a purely ministerial character, and such settlements did not partake of the nature of judicial decisions, and are not binding upon the County. The Commissioners and the Treasurer are alike agents of the County, and the acts or omissions of one agent in the discharge of duties imposed by law, can in no way affect the obligation of the other to the common principal. * * * * * * It was the duty of the defendant, Hill, to properly account for all moneys received as County Treasurer, and to pay over to his successor in office, at the expiration of his official term, all money belonging to the County then in his hands; but there was no law authorizing the County Commissioners to absolve him from the performance of that duty. (*Dillon vs. Spokane County, 3 Wash. Ter., 498.*)"

(See record, page 176.)

From the above it is apparent that no federal question was raised or decided.

But if we have not correctly applied the authorities to the facts in this case upon the record, then we maintain that the contention of the plaintiffs in error is manifestly untenable and without merit, and this brings us to the second part of our motion, namely, that the judgment of the Supreme Court of the State of Washington herein be affirmed, because that said case was rightly decided by the Supreme Court of the State of Washington.

The Supreme Court of the State by this decision do not deny plaintiffs in error a right specially alleged or claimed under the laws of the United States. They decide that Boards of Commissioners do not possess powers claimed by plaintiff in error by reason of the non-existence of any law of the Territory vesting said boards with such powers. It is true said Court in a clause which may be considered *obiter dictum* assert that the Territorial Legislature did not possess the power to pass such law, but this assertion is unnecessary. The question decided was manifestly a non-federal question. But suppose that the Supreme Court did thus decide a federal question and that it was erroneously decided against the plaintiffs in error, yet if any non-federal question was decided by the State Court broad enough to sustain the judgment, it will be affirmed.

K. & P. R. R. Co. vs P. & K. R. R. Co., 14 Wallace, 23,
Rector vs. Ashley, 6 Wallace, 142.
Murdock vs. Memphis, 20 Wallace, 636.
Jenkins vs. Loewenthal, 110 U. S., 400.
Williams vs. Oliver, 12 How. 111, 125.
Crossley vs. New Orleans, 108 U. S., 105.
McManus vs. O'Sullivan, 91 U. S., 579.

It will be affirmed even though the Supreme Court of the United States considers the decision of the non-federal question as unsound.

DeSausure vs. Gaillard, 127 U. S., 234.

If there were two good grounds for decision one federal and the other non-federal, the Court will presume that it was decided on non-federal grounds.

Klinger vs. Missouri, 13 Wallace, 263.
Insurance Co. vs. Treasurer, 11 Wallace, 204.
Commercial Bank vs. Rochester, 15 Wallace, 639.
Mills vs. Brown, 16 Peters, 525.
Bowling vs. Lessee, 91 U. S., 594.

Respectfully Submitted,

RONALD & PILES,

Attorneys for Defendants in Error.

John Paul Jones
Reese H. Voorhees
of Counsel

Due service of copy of the within Brief

hereby acknowledged this .....

..... day of

..... A. D. 1891.

.....

Attorneys for Plaintiffs.

Office Supreme Court U. S.
FILED,
OCT 21 1891
JAMES H. McKENNEY,
CLERK

IN THE

Supreme Court of the United States.

E. P. FERRY, EBEN SMITH, and DAVID KELLOGG, Executors of the last Will of GEORGE D. HILL, deceased, H. L. YESLER, JAMES MCNAUGHT, JOHN LEARY, J. W. GEORGE, E. P. FERRY, and J. F. MCNAUGHT, Plaintiffs in Error,

vs.

THE COUNTY OF KING, and JAMES MCNAUGHT, DE F. S. HYDE, and FLORENCE HYDE CHICK, Executors of the last Will of D. N. HYDE, deceased, Defendants in Error.

MOTION TO DISMISS WRIT OF ERROR AND AFFIRM JUDGMENT.

Comes now the defendant in error, by its attorneys, and gives this honorable court and said plaintiffs in error notice that it appears specially for the purposes of this motion and for no other purpose, and moves the court as follows:

I.

That the so-called writ of error herein be dismissed for want of jurisdiction of this court to hear the same and because the so-called writ of error is void, and so appearing and moving, said defendant in error alleges and states the following irregularities affecting the jurisdiction of this court as aforesaid:

FIRST. The record fails to show that the so-called or pretended writ of error has not been allowed.

SECOND. The so-called or pretended writ of error and citation are not made returnable within the time prescribed by law and the rules of this court and are void.

THIRD. The record shows that no federal question is involved or was raised in this cause or decided by the Supreme Court of the State of Washington.

II.

And the defendant in error further moves the court that the judgment of the State Supreme Court of the State of Washington herein rendered be affirmed on the ground that, although the record may show that this court has jurisdiction, it is manifest that this writ was taken for delay only, and that the question on which the jurisdiction depends is so frivolous as not to need further argument, and that said cause was rightly decided by the Supreme Court of the said State of Washington.

RONALD & PILES,
Attorneys for Defendant in Error.

JOHN PAUL JONES,
REESE H. VOORHEES,
Of Counsel.

Received copy of foregoing motion, together with copy of notice of calling up same for hearing and argument and copy of brief of defendant in error upon said motion, and service of same acknowledged this 21st day of September, 1891.

J. C. HAINES,
Attorney for Plaintiffs in Error.

IN THE SUPREME COURT OF THE UNITED STATES.

E. P. FERRY, EBEN SMITH, and DAVID KELLOGG, Executors of the last Will of George D. Hill, deceased; H. L. YESLER, JAMES MCNAUGHT, JOHN LEARY, J. W. GEORGE, E. P. FERRY, and J. F. MCNAUGHT, Plaintiffs in Error,

vs.

THE COUNTY OF KING, and JAMES MCNAUGHT, DE F. S. HYDE, and FLORENCE HYDE CHICK, Executors of the last Will of D. N. Hyde, deceased, Defendants in Error.

Notice of Calling up Motion to Dismiss Writ of Error and Affirm Judgment.

To the above-named Plaintiffs in Error and to J. C. Haines, Esq., their attorney:

You and each of you will please take notice that the undersigned attorneys for the defendant in error, will, on Monday, the 2d day of November, 1891, call up, at the opening of court on said day or as soon thereafter as counsel can be heard, for argument and hearing in the above-entitled court, the motion heretofore made and filed by defendant in error to dismiss the writ of error and affirm judgment in the above-entitled cause.

RONALD & PILES,
Attorneys for Defendant in Error.

JOHN PAUL JONES,
REESE H. VOORHEES,
Of Counsel.

Received copy of the above notice, together with copy of motion therein referred to and copy of brief of defendant in error on motion to dismiss writ of error, and service of same hereby acknowledged this 21st day of September, 1891.

J. C. HAINES,
Attorney for Plaintiffs in Error.